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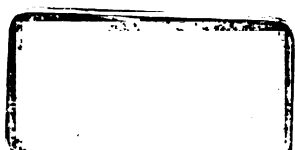
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# Compiments of Reuben G Hunt

[PUBLIC—No. 301—69TH CONGRESS]

[S. 1039]

An Act To amend an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 1 (a), subdivisions 6, 8, and 24 of an Act entitled "An Act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and Acts amendatory thereof and supplementary thereto, be, and the same hereby are, amended as follows:

"(6) 'Corporations' shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association, joint stock companies, unincorporated companies and associations, and any business conducted by a trustee, or trustees, wherein beneficial interest or ownership is evidenced by certificate or other written instrument.

"(8) 'Courts of bankruptcy' shall include the district courts of the United States and of the Territories and possessions to which this Act is or may hereafter be applicable, the Supreme Court of the District of Columbia, and the United States Court of Alaska.

"(24) States shall include the Territories and possessions to which this Act is, or may hereafter be, applicable, Alaska, and the District of Columbia."

SEC. 2. That the introductory provision preceding subdivision 1 of section 2 of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"That the courts of bankruptcy as hereinbefore defined, namely, the district courts of the United States in the several States, the Supreme Court of the District of Columbia, the district courts of the several Territories and possessions to which this Act is, or may hereafter be, applicable, and the United States Court in the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held."

SEC. 3. That section 3 (a) of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(a) Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other

creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or other disposition of any property affected by such preference vacated or discharged such preference; or (4) suffered, or permitted, while insolvent, any creditor to obtain through legal proceedings any levy, attachment, judgment, or other lien, and not having vacated or discharged the same within thirty days from the date such levy, attachment, judgment, or other lien was obtained; or (5) made a general assignment for the benefit of his creditors; or, while insolvent, a receiver or a trustee has been appointed, or put in charge of his property; or (6) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."

Sec. 4. That section 7 (a), subdivision (8), of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(8) Prepare, make oath to, and file in court within ten days after adjudication, if an involuntary bankrupt, and within ten days after the filing of a petition, if a voluntary bankrupt (unless in either case further time is granted), a schedule of his property showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors showing their residence, if known; if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions, as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee."

Sec. 5. The section 12 (a) of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(a) A bankrupt may offer, either before or after adjudication, terms of composition to his creditors, after, but not before, he has been examined in open court, or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examination of the bankrupt, and preservation or conduct of the estate, at which meeting the judge or referee shall preside; but action upon the petition for adjudication shall not be delayed, except that the court, for good cause shown, may in its discretion delay such action upon such terms and conditions for the protection of and indemnity against loss by the bankrupt estate as may be proper."

Sec. 6. That section 14 (a) and (b) of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(a) Any person may, after the expiration of one month and within twelve months, subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending, if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

"(b) The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other parties in interest, at such time as will give the

trustee or parties in interest a reasonable opportunity to be fully heard; and investigate the merits of the application and discharge the applicant, unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) destroyed, mutilated, falsified, concealed, or failed to keep books of account, or records, from which his financial condition and business transactions might be ascertained; unless the court deem such failure or acts to have been justified, under all the circumstances of the case; or (3) obtained money or property on credit, or obtained an extension or renewal of credit, by making or publishing, or causing to be made or published, in any manner whatsoever, a materially false statement in writing respecting his financial condition; or (4) at any time subsequent to the first day of the twelve months immediately preceding the filing of the petition, transferred, removed, destroyed, or concealed or permitted to be removed, destroyed, or concealed any of his property, with intent to hinder, delay, or defraud his creditors; or (5) has been granted a discharge in bankruptcy within six years; or (6) in the course of proceedings in bankruptcy, refused to obey any lawful order of or to answer any material question approved by the court; or (7) has failed to explain satisfactorily any losses of assets or deficiency of assets to meet his liabilities: *Provided*, That if, upon the hearing of an objection to a discharge, the objector shall show to the satisfaction of the court that there are reasonable grounds for believing that the bankrupt has committed any of the acts which, under this paragraph (b), would prevent his discharge in bankruptcy, then the burden of proving that he has not committed any of such acts shall be upon the bankrupt: *And provided further*, That the trustee shall not interpose objections to a bankrupt's discharge until he shall be authorized so to do by the creditors at a meeting of creditors called for that purpose on the application of any creditor."

SEC. 7. That section 21 of said Act, as so amended, be, and the same hereby is, amended by adding after paragraph (g) thereof a new paragraph (h), to read as follows:

"(h) A communication by a creditor, receiver, or trustee of one by or against whom a bankruptcy petition is filed, or who has been adjudicated a bankrupt, to another creditor, uttered in good faith and with reasonable grounds for belief in its truth, concerning the conduct, acts, or property of such bankrupt, shall be privileged, and the creditor receiver, or trustee so uttering the same shall not be held liable therefor."

Sec. 8. That section 23 of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(a) The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

"(b) Suits by the trustee shall be brought or prosecuted only in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of

the proposed defendant, except suits for the recovery of property under section 60, subdivision b; section 67, subdivision e; and section 70, subdivision e."

Sec. 9. That section 24 (a) and (b) of said Act, as so amended, be, and the same hereby is, amended to read as follows, and by adding at the end thereof, a new subdivision (c), to read as follows:

"(a) The Supreme Court of the United States, the circuit courts of appeal of the United States, the Court of Appeals of the District of Columbia, and the supreme courts of the Territories, in vacation, in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases.

"(b) The several circuit courts of appeal and the Court of Appeals of the District of Columbia shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law (and in matter of law and fact the matters specified in section 25) the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised by appeal and in the form and manner of an appeal, except in the cases mentioned in said section 25 to be allowed in the discretion of the appellate court.

"(c) All appeals under this section shall be taken within thirty days after the judgment, or order, or other matter complained of, has been rendered or entered."

Sec. 10. That section 25 (a) of said Act, as so amended, be, and the same is, amended to read as follows:

"(a) That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit courts of appeal of the United States and the Court of Appeals of the District of Columbia and to the supreme courts of the Territories in the following cases, to wit: (1) From a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of \$500 or over. Such appeal shall be taken within thirty days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be."

SEC. 11. That section 29 (a), (b), and (d) of said Act, as so amended, be, and the same hereby is, amended to read as follows, and that section 29 be further amended by adding after paragraph (d) thereof a new paragraph (e) to read as follows:

"(a) A person shall be punished by imprisonment for a period of not to exceed five years upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee, receiver, custodian, or other officer of the court.

"(b) A person shall be punished by imprisonment for a period of not to exceed five years upon conviction of the offense of having knowingly and fraudulently (1) concealed from the receiver, trustee,

United States marshal, or other officer of the court charged with the control or custody of property, or from creditors in composition cases, any property belonging to the estate of a bankrupt; or (2) made a false oath or account in, or in relation to any proceeding in bankruptcy; or (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition, personally, or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition with intent to defeat this Act; or (5) received or attempted to obtain any money or property, remuneration, compensation, reward, advantage, or promise thereof from any person, for acting or forbearing to act in bankruptcy proceedings; or (6) having been an officer or agent of any person or corporation, and in contemplation of the bankruptcy of such person or corporation, or with intent to defeat the operation of this Act, concealed or transferred any of the property of the debtor; or (7) after the filing of the petition, or, in contemplation of bankruptcy, concealed, destroyed, mutilated, or falsified any book, document, or record affecting or relating to the property or affairs of a bankrupt; or (8) after the filing of the petition, withheld from the receiver or trustee any book, document, or paper affecting or relating to the property or affairs of a bankrupt, to the possession of which he is entitled.

"(d) A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within three years after the commission of the offense.

"(e) (1) Whenever any referee, receiver, or trustee shall have grounds for believing that any offense under this Act has been committed, or from facts or circumstances brought out in the course of administration or otherwise brought to his attention, that there is reasonable ground to believe that such an offense has been committed, or for special reason, an investigation should be had in connection therewith, it shall be the duty of such referee, receiver, or trustee to report such matter to the United States attorney for the district in which it is believed such an offense has been committed, including in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses, and a statement as to the offense or offenses believed to have been committed.

"(2) It shall be the duty of every United States attorney immediately to inquire into the fact so reported to him by any referee, receiver, or trustee, and the law applicable thereto, and if it appears probable that any offense under this Act has been committed, in a proper case and without delay, to present the matter to the grand jury, unless upon inquiry and examination such district attorney decides that the ends of public justice do not require that the alleged offense should be investigated or prosecuted, in which case he shall report the facts to the Attorney General for his direction in the premises."

SEC. 12. That section 38 (a), subdivision 5, of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(5) During the examination of the bankrupt, or other proceedings, authorize the employment of stenographers for reporting and

transcribing the proceedings at such reasonable expense to the estate as the court may fix."

SEC. 13. That section 57 (n), of said Act, as so amended, be, and the same hereby is, amended to read as follows:

"(n) Claims shall not be proved against a bankrupt estate subsequent to six months after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer."

SEC. 14. That section 60 (a), of said Act as so amended, be, and the same hereby is, amended to read as follows:

"(a) A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer to any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of recording or registering of the transfer, if by law such recording or registering is required or permitted."

SEC. 15. That section 64, subdivisions (a) and (b), of said Act, as so amended, be, and the same hereby are, amended to read as follows:

"(a) The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality, in the order of priority as set forth in paragraph (b) hereof: *Provided*, That no order shall be made for the payment of a tax assessed against real estate of a bankrupt in excess of the value of the interest of the bankrupt estate therein as determined by the court. Upon filing the receipts of the proper public officers for such payments the trustee shall be credited with the amounts thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

"(b) The debts to have priority, in advance of the payment of dividends to creditors, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expense of such recovery; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases while performing the duties herein prescribed, and to the bankrupt in



voluntary and involuntary cases, as the court may allow; (4) where the confirmation of composition terms has been refused or set aside upon the objection and through the efforts and at the expense of one or more creditors, in the discretion of the court, the reasonable expenses of such creditors in opposing such composition; (5) wages due to workmen, clerks, traveling or city salesmen, or servants, which have been earned within three months before the date of the commencement of the proceeding, not to exceed \$600 to each claimant; (6) taxes payable under paragraph (a) hereof and (7) debts owing to any person who by the laws of the States or the United States is entitled to priority: *Provided*, That the term 'person' as used in this section shall include corporations, the United States and the several States and Territories of the United States."

SEC. 16. That section 70, subdivision (a) 2, of said Act as so amended, be, and the same hereby is, amended to read as follows:

"(2) Interests in patents, patent rights, copyrights, and trademarks, and in applications for patents, copyrights, and trade-marks: *Provided*, That in case the trustee, within thirty days after appointment, does not notify the applicant for a patent, copyright, or trade-mark of his election to prosecute the application to allowance or rejection, the bankrupt may apply to the court for an order revesting him with the title thereto, which petition shall be granted, unless, for cause shown by the trustee, the court grants further time to the trustee for making such selection; and such applicant may, in any event, at any time petition the court to be revested with such title in case the trustee shall fail to prosecute such application with reasonable diligence; and the court, upon revesting the bankrupt with such title, shall direct the trustee to execute proper instruments of transfer to make the same effective in law and upon the records."

SEC. 17. Nothing herein contained shall have the effect to release or extinguish any penalty, forfeiture, or liability incurred under any Act or Acts of which this Act is amendatory.

SEC. 18. The provisions of this amendatory Act shall govern proceedings, so far as practicable and applicable, in bankruptcy cases pending when it takes effect; but as to proceedings in cases pending when this Act takes effect, to which the provisions of this amendatory Act are not applicable, such proceedings shall be disposed of conformably to the provisions of said Act approved July 1, 1898, and the Acts amendatory thereof and supplementary thereto.

SEC. 19. All Acts or parts of Acts inconsistent with any provisions of this Act are hereby repealed.

SEC. 20. This Act shall take effect and be in force on and after three months from the date of its approval.

Approved, May 27, 1926.



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**THE**  
**LAW OF BANKRUPTCY**

**INCLUDING THE**

**NATIONAL BANKRUPTCY LAW OF 1898,**

**THE**

**RULES, FORMS AND ORDERS OF THE UNITED STATES SUPREME  
COURT, THE STATE EXEMPTION LAWS, THE  
ACT OF 1867, ETC., ETC.,**

**ILLUSTRATED BY THE**

**BANKRUPTCY DECISIONS UNDER THE ACT OF 1867.**

**BY**

**EDWIN C. BRANDENBURG, LL.M.,**

**EDITOR OF "THE SUPPLEMENT TO THE UNITED STATES REVISED STATUTES," "THE  
OPINIONS OF THE ATTORNEY GENERAL," AND ONE OF THE REVIEWERS OF  
BOUVIER'S LAW DICTIONARY, ETC., ETC.; IN CHARGE OF BANK-  
RUPTCY MATTERS IN THE DEPARTMENT OF JUSTICE,  
AND MEMBER OF THE BAR OF THE UNITED  
STATES SUPREME COURT AND THE  
DISTRICT OF COLUMBIA.**

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## PREFACE.

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The numerous requests from judges, lawyers and business men for authoritative construction of the various provisions of the recent Federal Bankruptcy Law, which have been referred to the author for disposition in the exercise of his official function, and the obvious necessity for a comprehensive and complete treatise on the subject of Bankruptcy, have actuated him in the preparation of this work.

Believing the demand of the legal profession of to-day to be for cases rather than comments, the author has carefully avoided criticisms and comments except where clearly justified by authoritative decisions. In considering the provisions of the Federal Bankruptcy Act of 1898, great care has been observed in giving references to co-ordinate principles and analogous provisions of the present Federal Bankruptcy Law and that of 1867, to avoid the labor and necessity of frequent cross-references. With that end in view, under every section and subdivision of the law of 1898, the author has placed analogous provisions of the law of 1867 and the decisions of all the courts based thereon.

It is believed the decisions of the courts upon questions arising under the general Bankruptcy Law of 1867 will be persuasive, if not controlling, in the disposition of questions arising under the many parallel provisions of the law of 1898. For that reason all the decisions of all the courts, in controversies under the law of 1867, have been specially and

carefully digested for this work, resort being had to the decisions themselves rather than to text-books and digests of others, as is frequently done. The interesting and valuable results attending this course, as found throughout this work, attest its importance and, in a measure, compensate for the laborious task.

The author takes this opportunity of publicly expressing his thanks to George H. Gorman, Esq., for the preparation of the exemption laws of the various states, and to acknowledge his obligation to Irving U. Townsend, Esq., Edward F. Colladay, Esq., and W. Spencer Armstrong, Esq., of the Washington bar, for valuable assistance rendered.

Because of the great labor incident to digesting the bankruptcy cases, and the short time afforded in which to place in the hands of the public a work containing the rules, orders and forms of the Supreme Court of the United States before the rules themselves should become operative, some errors and omissions will doubtless be found, for which the author asks the indulgence of the critic.

E. C. B.

WASHINGTON, D. C.,  
December, 1898.



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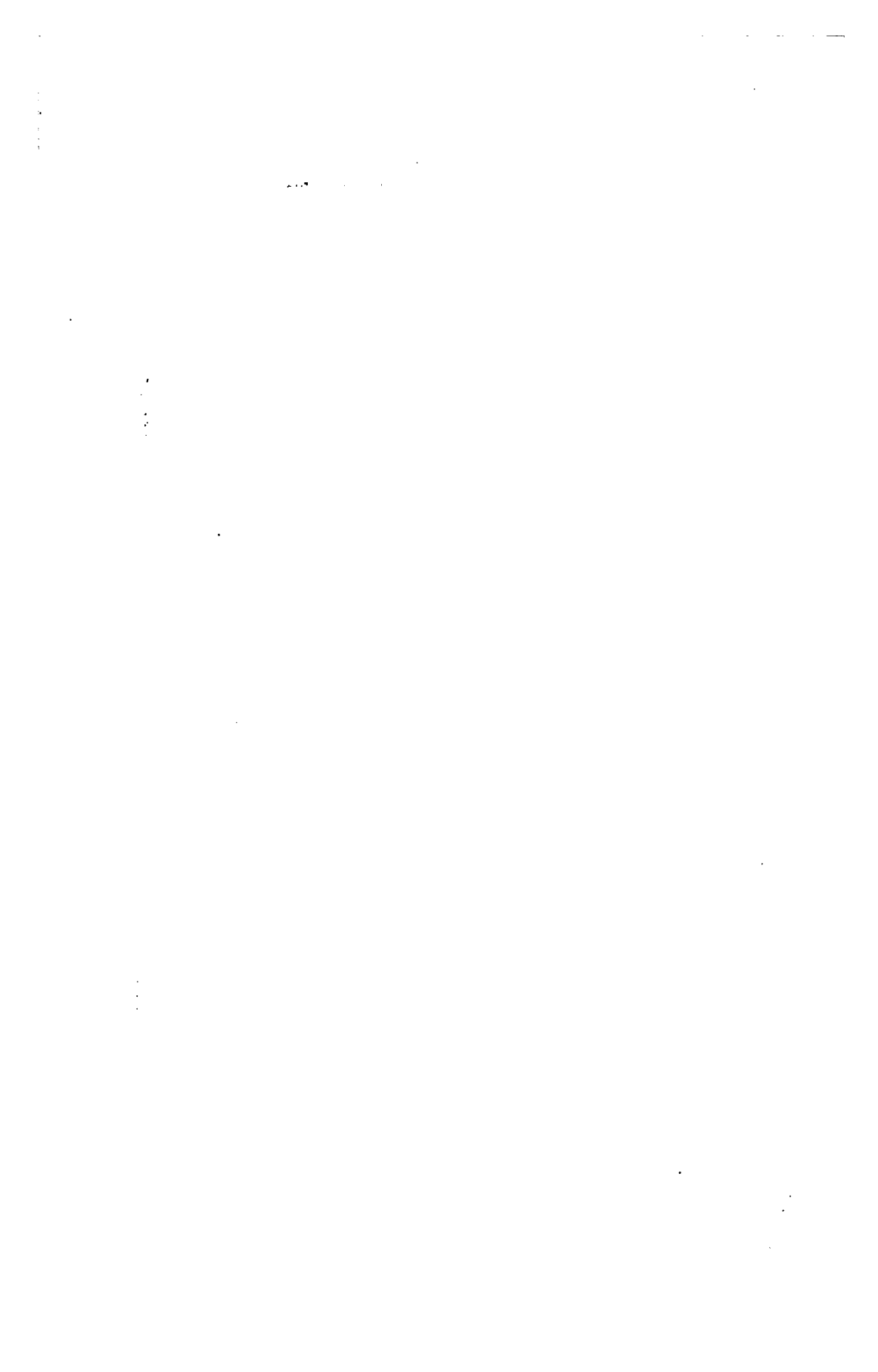
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# LAW OF BANKRUPTCY.

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## TITLE I.

### IN GENERAL.

With hardly an exception, bankruptcy laws form a part of the administrative systems of all civilized nations. Great Britain, Germany, Russia, France, Italy, Norway, Sweden, Spain, Mexico and many other nations have responded to the needs of their people and wisely provided laws governing bankruptcy. One of the earliest systems is found in the statutes of England of 1542, which has from time to time been perfected and continues in force. By the enactment of the law of July 1, 1898, the people of the United States have been given a system which, although it may be imperfect in some minor respects, yet as a whole shows great thought and care even to many of the minutest details.

The systems in vogue in the several nations show much diversity, varying from the system found in Russia — where the right of the debtor to resume business is dependent upon the good will of his creditors, and where a single dissatisfied creditor can, upon making a paltry monthly payment, keep the bankrupt a prisoner until the debt is paid — to the highly advanced system which prevails in England.

As the idea of uniformity in bankruptcy proceedings may be said to have become a part of the Federal constitution by a process of evolution from the English statutory law, it is interesting to note as a matter of history that the earliest statute on the subject of bankruptcy is found in 34 and 35 Henry VIII (chapter 4), which was primarily provided as a protection against the Lombards and fraudulent traders,

who, like the dishonest debtors of to-day, incurred obligations and liabilities and then surreptitiously removed themselves beyond the jurisdiction, without having been first discharged therefrom. It was without limit as to the persons who could become recipients of its provisions, the restriction as to traders first appearing in the statute of Elizabeth. The right of a trader to become a voluntary bankrupt first appears in the statute of 6 George IV (chapter 16).<sup>1</sup>

Among the earliest laws affecting insolvents, we find applicants for relief referred to as "persons craftily obtaining into their hands great substance of other men's goods, who suddenly flee to parts unknown or keep their houses, not minding to pay or restore to their creditors their debts and duties, but at their own will and pleasure consume the substance obtained by credit of other men, for their own pleasure and delicate living, against all reason, equity and good conscience."<sup>2</sup>

While these early bankruptcy laws went upon the hypothesis that one guilty of bankruptcy was a criminal,<sup>3</sup> this view certainly does not now prevail, and in fact did not at the time of Lord Loughborough, who remarked, with reference to bankrupts, "the law, upon the act of bankruptcy being committed, vests his property upon a just consideration; not as a forfeiture; not on a supposition of a crime committed; not as a penalty."<sup>4</sup>

Numerous statutes were enacted in England governing bankruptcy; but one of the most complete was that of August 1, 1849, which is aptly described by its title as "An act to amend and consolidate the laws relating to bankruptcy," and this in turn has been on several occasions amended.

Chief Justice Shaw, in describing the English system, says it is "an adversary proceeding against a defaulting

<sup>1</sup> *Kunzler v. Kohaus*, 5 Hill, 322.

<sup>2</sup> 34 and 35 Henry VIII, ch. 4.

<sup>3</sup> 3 Pars. on Contracts, 425.

<sup>4</sup> *Sill v. Worswick*, 1 H. Bl. 665;

*In re De Forrest*, 9 N. B. R. 278;

Fed. Cas. 3745.



trader, upon doing certain acts indicative of present or impending insolvency. These (bankrupt) laws provide, generally, that upon a trader's doing certain acts considered acts of bankruptcy, a creditor may apply for and obtain a commission (out of chancery), under which the whole of the trader's property is sequestered and taken into the custody of the law, to be administered by officers appointed for that purpose, the proceeds of which, with some slight exceptions, are appropriated to the payment of all the bankrupt's debts, if sufficient therefor; otherwise to pay them in equal proportions, as far as is sufficient for that purpose. The same law further provides that, if the bankrupt will honestly and faithfully co-operate in the proceeding, if he will disclose all his property and effects, and aid the officers appointed for that purpose by information and by all means in his power, and do all the duties required of him in the premises, he shall be absolved and discharged of all his debts, and receive a certificate as the authoritative evidence of his right to such discharge."<sup>1</sup>

The oppressor's hand resting heavily upon our forefathers in the old world, and causing them to migrate to new and untried fields, naturally inclined them to incorporate liberal and wise provisions for the protection of all classes in the Federal constitution. Among them is one evidently suggested by the English bankruptcy statutes, and it is found in section 8 of article 1 of that instrument, which authorizes congress "to establish . . . uniform laws on the subject of bankruptcy throughout the United States." This section, together with section 10 of the same article, providing that "no state shall . . . pass any laws impairing the obligation of contracts," are most important factors in the legal and commercial world. Pursuant to the authority contained in section 8, congress has on three different occasions previous to the present one, enacted laws providing a uniform system of bankruptcy, which for evident reasons failed of their purpose and early expired.

<sup>1</sup> May v. Breed, 7 Cush. 28.

The first was the act of April 4, 1800,<sup>1</sup> and was limited to five years; but it was repealed by the act of December 19, 1803.<sup>2</sup> The fact that it was intended chiefly for the protection of creditors, the sparseness of the settlements, the scarcity of Federal courts, and the difficulty and slowness of travel, contributed mainly to its failure. The distance between places where courts were held, by reason of the method of locomotion, made ready relief almost impossible and soon brought about a demand for the repeal of the law.

The second act was approved August 19, 1841,<sup>3</sup> but like its predecessor was short lived, being repealed March 3, 1843.<sup>4</sup> In addition to some of the causes that contributed to the failure of the prior law, this one was framed so as to greatly favor the debtor; it also became the subject of political contention; and, under the combined influence, naturally failed.

The next bankruptcy law was approved March 2, 1867,<sup>5</sup> and after an existence of eleven years was repealed by the act of June 7, 1878,<sup>6</sup> to take effect September 1, 1878. The law was several times amended, the most important modification being that made by the act of June 22, 1874.<sup>7</sup> While this law of 1867 had many imperfections, its provisions were more equable as between creditor and debtor; but the expenses attending litigation and its administration, together with the lack of uniform rules and regulations governing assignees and registers, more than all else, contributed to its failure and induced its repeal.

Every business transaction involving the giving of credit necessarily implies two classes—a debtor and a creditor. Bankruptcy laws are not designed for one but for both classes, and are beneficial to all but the dishonest creditor. The policy and aim of bankrupt laws are to compel an equal distribution of the assets of the bankrupt among all his creditors. Hence, when a merchant or trader, by any of these

<sup>1</sup> 2 Stat. L. 19.

<sup>2</sup> 2 Stat. L. 243.

<sup>3</sup> 5 Stat. L. 440.

<sup>4</sup> 5 Stat. L. 614.

<sup>5</sup> 14 Stat. L. 517.

<sup>6</sup> 20 Stat. L. 99.

<sup>7</sup> 18 Stat. L. 178.

tests of insolvency, has shown his inability to meet his engagements, one creditor cannot, by collusion with him, or by a race of diligence, obtain a preference to the injury of others.<sup>1</sup>

In the absence of a bankruptcy law, the least suspicion of the insolvency of a debtor, his inability to meet financial obligations, etc., naturally causes the zealous creditor to institute attachment proceedings and perhaps cause liquidation of his debtor, who, left to his own resources and given reasonable time, would be able to avoid suspension and perhaps ruin. The sole gainer through the absence of such a law, outside of the dishonest debtor, is he who is first on the ground with his attachment process and whose lien operates to defeat other creditors with equally just claims, but who are perhaps more merciful and less anxious to cause the creditor's liquidation.

In addition to the value of a bankruptcy law in conducing to a better business understanding between the debtor and creditor, it acts as a preventive and check to overtrading, by largely preventing the giving of preferences by the insolvent. In this connection Cadwalader, J., said: "In this respect its operation will be gradual, but must be highly beneficial. When relations and friends of a debtor, and when capitalists, who without affection or friendship would make profit from his embarrassments, learn that they cannot be secured by a preference out of the wreck of his affairs, they will not furnish him the means of overtrading. So long as he could, by securing advances and accommodations, obtain them, the temptation to attempt to retrieve his losses, by doubling his investments, was, before the enactment of the bankrupt law, irresistible; and the system of business was that of mere gambling adventure. But when a debtor who suffers losses knows that he cannot prefer his relations and friends, and when capitalists know that they cannot, without risk, assist him to the injury of other creditors, he will stop his business in season, to give a fair dividend to all

<sup>1</sup> Shawhan v. Wherritt, 7 How. 627.

his creditors, and thus make a fair settlement with them in the court of bankruptcy, or, much oftener, out of it. Then, in the course of time, few judicial bankruptcies will occur."<sup>1</sup>

The purpose of a bankrupt law is to place within the possession of the creditor that to which he may be entitled, within the shortest reasonable time, and at the same time, if the bankrupt has made a fair and honest surrender, and complied with the requisitions made of him, to give him a speedy release, and let him begin anew to provide an honest living for himself and those dependent upon him, and again become a useful and active member of society.<sup>2</sup>

A bankrupt or insolvent law, viewed as operating on the rights of creditors, is a system of remedy. It takes out of the hands of the creditors the ordinary remedial processes, and suspends the ordinary rights which by law belong to creditors, and substitutes in their place a new and comprehensive remedy designed for the common benefit of all. The rights with which the assignee is clothed as the representative of creditors are to render this great and common remedy effectual.<sup>3</sup>

Bankruptcy is an ancient English word which has come down to us at least from the time of Elizabeth, bearing all the way a meaning co-extensive with insolvency, and it was especially equivalent to that word when the constitution was adopted.<sup>4</sup>

The only substantial difference between a strictly bankrupt law and an insolvent law lies in the circumstance that the former affords relief upon the application of the creditor, and the latter upon the application of the debtor. In the general character of the remedy there is no difference, however much the modes by which the remedy may be administered may vary. But, even in the respect named, there is no difference in this instance. The act of congress (1867) is both a bankrupt act and an insolvent act by defini-

<sup>1</sup> In re Woods, 7 N. B. R. 126.

<sup>2</sup> Curtis, J., in *Betton v. Valen-*

<sup>3</sup> In re Witkowski, 10 N. B. R. 209; Fed. Cas. 17920.

*tine*, 1 Curt. 176.

<sup>4</sup> *Kunzler v. Kohaus*, 5 Hill, 320.

tion, for it affords relief upon the application of either the debtor or the creditor under the heads of voluntary and involuntary bankruptcy.<sup>1</sup>

"The plain object and policy of the insolvent laws is to require a debtor, as soon as he has reason to believe himself insolvent, and before he has frittered away his property by schemes which appear plausible, to put himself and his assets at once into the hands of the law, with a view to two objects: one to make an equal distribution among all his creditors; the other, to pay every creditor as large a part of his whole debt as the means of the debtor will allow, under the direction and management of officers and agents who are capable of executing a trust, and responsible for the faithful performance of their duties."<sup>2</sup>

One distinction between an assignment and an attachment is, that the former is a sequestration of all of a debtor's property to pay all his creditors *pro rata*, while the latter is a sequestration of his property to pay a single debt. One may work a preference, the other not.<sup>3</sup>

This difficulty of discriminating with any accuracy between insolvent and bankrupt laws would lead to the opinion that a bankrupt law may contain those regulations which are generally found in insolvent laws; and that an insolvent law may contain those which are common to a bankrupt law.<sup>4</sup>

States have the right to enact insolvent and bankrupt laws, provided there be no act of congress in force establishing a uniform system of bankruptcy, conflicting with their provisions, and provided the law itself be so framed that it does not impair the obligation of contracts.<sup>5</sup>

All state laws relating to the subject-matter of the Federal statute are suspended or superseded during the existence of

<sup>1</sup> Martin v. Berry, 87 Cal. 232.

<sup>4</sup> Sturges v. Crowninshield, 4

<sup>2</sup> Per Shaw, C. J., Fernald v. Gay, 12 Cushing, 597. See In re Citizens' Savings Bank, 9 N. B. R. 152; Fed. Cas. 2785.

Wheat. 196.

<sup>3</sup> Maltbie v. Hotchkiss, 5 N. B. R. 486.

<sup>5</sup> Baldwin v. Hale, 1 Wall. 223; Sturges v. Crowninshield, 4 Wheat. 123; Denny v. Bennett, 128 U. S. 489, 497; In re Reynolds, 9 N. B. R. 52; Fed. Cas. 11723.

the Federal law,<sup>1</sup> even as between citizens of the same state,<sup>2</sup> but are not repealed by it, and are only suspended, so that, upon the repeal of the Federal law, the state law is revived without the necessity of re-enactment.<sup>3</sup>

The Federal law does not, however, deprive the state tribunals of any portion of their jurisdiction necessary to the final administration of the estates of insolvents who had made a surrender previous to its passage.<sup>4</sup> But the fact that a state court has taken possession of the property of an insolvent, thereby first gaining jurisdiction, cannot be allowed to defeat the proper execution of the bankrupt law.<sup>5</sup>

It has been held, however, that a Federal bankrupt act (the act of 1873) "does not *ipso facto* suspend state laws for the collection of debts,"<sup>6</sup> such, for example, as state laws relating to the insolvent estates of persons under legal disability, as lunatics or spendthrifts,<sup>7</sup> or an insolvent law which merely protects the person of the debtor from imprisonment.<sup>8</sup>

And so it has been held that there is no proper analogy between insolvent laws, properly so called, and those principles of the common law which allow and sanction the conveyance of his property by a debtor for the equal benefit of all his creditors, and no such relation or resemblance as to warrant the conclusion that, because the existence of a Federal bankrupt law suspends all state insolvent laws, it must therefore also suspend those common-law principles. Accordingly, a common-law assignment for the benefit of all his creditors alike was held to be valid, notwithstanding the existence of the Federal bankrupt law, as against a creditor

<sup>1</sup> *Perry v. Langley*, 1 N. B. R. 559; <sup>4</sup> *Meekins v. Creditors*, 3 N. B. R. 126.  
*Griswold v. Pratt*, 9 Metc. 16; *In re Reynolds*, 9 N. B. R. 50; Fed. Cas. 11723; *Thornhill et al. v. Bank*, 5 N. B. R. 367; 1 *Woods*, 1; Fed. Cas. 13992; *Shryrock et al. v. Bashore*, 13 N. B. R. 481.

<sup>5</sup> *In re Safe Deposit & Savings Inst.*, 7 N. B. R. 392; Fed. Cas. 12211.

<sup>6</sup> *Chandler, Receiver, v. Siddle*, 3 *Dillon*, 477; 10 N. B. R. 236; Fed. Cas. 2594.

<sup>7</sup> *Kassard v. Kroner*, 4 N. B. R. 569. <sup>8</sup> *Mayer v. Hellman*, 91 U. S. 496;

*Lavender v. Gosnell*, 12 N. B. R. 282; *In re Everitt*, 9 N. B. R. 90; *Hawkins v. Learned*, 54 N. H. 333.

<sup>8</sup> *Sullivan. Assignee, v. Heiskell, Crabbe*, U. S. Dist. Ct. 525, 528.

refusing to accept the benefit thereof, and who, in an action for the recovery of his debt, seeks to garnish the assignee upon the ground that the assignment is void. Whether such assignment would be held to be an act of bankruptcy, if the question were raised in a direct proceeding for that purpose, is not passed upon.<sup>1</sup>

A general assignment for the benefit of creditors under the provisions of a state law, and during the existence of the United States bankrupt act, is superseded by proceedings in bankruptcy,<sup>2</sup> though it may be held valid if the rights of creditors are not thereby prejudiced.<sup>3</sup>

But so far as such state laws attempt to discharge the contract as against citizens of other states, they are unconstitutional;<sup>4</sup> and so a discharge under a foreign bankrupt law cannot be pleaded in bar to an action on a contract made in this country.<sup>5</sup> A state law discharging the person or the property of the debtor, and thereby terminating the legal obligation of the debt, cannot constitutionally be made to apply to debts contracted prior to the passage of the law; but the law may be made to apply to such future contracts as can be considered as having been made in reference to the law.<sup>6</sup> Statutes of this class must be construed to be parts of all contracts made when they are in existence, and therefore cannot be held to impair their obligation.<sup>7</sup> In fact, the inhibition of the constitution is wholly prospective. The states may legislate as to contracts thereafter made as they may see fit. It is only those in existence when the hostile law is passed that are protected from its effects.<sup>8</sup>

In fine, insolvent laws of one state cannot discharge the

<sup>1</sup>Cook v. Rogers, 81 Mich. 392, 398.  
See also Sullivan v. Lewis, Crabbe,  
U. S. Dist. Ct. 525, 528. See lan-  
guage of Marshall, C. J., in Brash-  
ear v. West, 7 Pet. 608, 614.

<sup>2</sup>Dolson et al. v. Kerr, 16 N. B. R.  
405.

<sup>3</sup>In re Hawkins et al., 2 N. B. R.  
122.

<sup>4</sup>Sturges v. Crowninshield, 4  
Wheat. 122.

<sup>5</sup>McMillan v. McNeill, 4 Wheat.  
203.

<sup>6</sup>Ogden v. Saunders, 12 Wheat.  
213; Baldwin v. Hale, 1 Wall. 223.

<sup>7</sup>Denny v. Bennett, 128 U. S. 489.

<sup>8</sup>Edwards v. Kearzey, 96 U. S.  
595, 603; Denny v. Bennett, 128  
U. S. 489, 495.

contracts of citizens of other states, because they have no extraterritorial operation,<sup>1</sup> and consequently the tribunal sitting under them, unless in cases where the citizen of such other state voluntarily becomes a party to the proceeding, has no jurisdiction in the case.<sup>2</sup> Legal notice cannot be given, and as a result there can be no obligation to appear, and, of course, there can be no legal default.<sup>3</sup>

Any question that may have existed as to the constitutionality of a Federal bankruptcy law has long since been dissipated by the decisions of the supreme court of the United States.

Congress is given plenary power over the subject of bankruptcy, under one limitation only, that the law passed upon that subject shall be uniform throughout the United States.<sup>4</sup> And this power carries with it a right to establish the details of the system if it shall think proper.<sup>5</sup> But congress cannot impose upon state courts any duties in connection with the enforcement of a bankrupt law.<sup>6</sup>

The retrospective effect of the bankrupt law, by impairing the obligation of contracts, does not render it unconstitutional, as the inhibition to the impairment of contracts does not apply to the Federal government.<sup>7</sup>

So far as congress has failed to legislate with reference to insolvents, state laws relating to them may be said to be operative. Proceedings instituted under state insolvency laws prior to the passage of the national bankruptcy law, approved July 1, 1898, are not affected by it.<sup>8</sup>

<sup>1</sup> *Baldwin v. Hale*, 1 Wall. 223; *Goodall v. Tuttle*, 7 N. B. R. 193; *Gilman v. Lockwood*, 4 id. 409; 3 Biss. 219; Fed. Cas. 5533.  
<sup>2</sup> *Boyle v. Zacharie*, 6 Pet. 635.

<sup>3</sup> *Clay v. Smith*, 3 Pet. 411; *Denny v. Bennett*, 128 U. S. 489.

<sup>4</sup> *Baldwin v. Hale*, 1 Wall. 223; 458; 8 Chi. Leg. News, 815; Fed. Cas. 12996; *In re Everett*, 9 N. B. R. 90; Fed. Cas. 4579.

<sup>5</sup> *In re Silverman*, 4 N. B. R. 173; Fed. Cas. 12855; *In re Duerson*, 13 N. B. R. 183; Fed. Cas. 4117.

<sup>6</sup> *Six Penny Savings Bank v. Stuyvesant Bank*, 10 N. B. R. 399; Fed. Cas. 12919; *In re Deckert*, 10 N. B. R. 1; Fed. Cas. 3728.

<sup>7</sup> *In re Jordan*, 8 N. B. R. 180; 30 Leg. Int. 296; Fed. Cas. 7514; *In re Smith*, 14 N. B. R. 295; 2 Woods, 458; 8 Chi. Leg. News, 815; Fed. Cas. 12996; *In re Everett*, 9 N. B. R. 90; Fed. Cas. 4579.

<sup>8</sup> See last paragraph of act. See also *Longis v. Creditors*, 20 La. Ann. 15; *Martin v. Berry*, 37 Cal. 208, where the same is held to be the effect of the act of 1867.



## TITLE II.

### THE NATIONAL BANKRUPTCY LAW.

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#### CHAPTER I.

##### DEFINITIONS.

**Sec. 1. Meaning of words and phrases.**—*a.* The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2)<sup>1</sup> "adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States; (4)<sup>2</sup> "bankrupt" shall include a person against whom an

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<sup>1</sup> An adjudication on a petition in bankruptcy is a final judgment which it is beyond the power of congress to annul or set aside (In re Comstock & Co., 10 N. B. R. 451; 6 Chi. Leg. News, 418; 22 Pittsb. Leg. J. 25; Fed. Cas. 8077), the rights of the parties being fixed at the date of the adjudication. (In re Kerr & Roach, 9 N. B. R. 566; Fed. Cas. 7729.)

<sup>2</sup> The word "bankrupt" is defined by Lord Coke as "a sign or mark, as we say a cart-rout, which is the sign or mark where the cart hath gone; so, metaphorically it is taken for him that hath wasted his estate and removed his *banque*, so that there is left but a mention thereof." 4 Inst. 277. Blackstone defines a "bankrupt" as "a trader who secretes himself or does certain other acts, tending to defraud his creditors." 2 Bl. Com. 471. The word "bankruptcy," under the act of 1841, meant a particular *status*, to be ascertained and declared by judicial decree. (In re Black et al., 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457.)

involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt; (5) "clerk" shall mean the clerk of a court of bankruptcy; (6)<sup>1</sup> "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) "court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; (8) "courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska; (9) "creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date of bankruptcy," or "time of bankruptcy," or <sup>2</sup>"commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11)<sup>3</sup> "debt" shall include any debt, demand, or claim provable in bank-

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<sup>1</sup> An insurance company is one of that class of corporations intended to be within the scope and provisions of the general bankruptcy law. (In re Merchants' Insurance Co., 6 N. B. R. 43; 3 Biss 162; 20 Pittsb. Leg. J. 32; 4 Chi. Leg. News, 73; Fed. Cas. 9441.)

<sup>2</sup> It is not the filing of every petition in bankruptcy that is deemed "a commencement of proceedings," but it is the filing of a petition upon which an order of adjudication may be made by the court (In re Rogers, 10 N. B. R. 444; 1 Cent. Law J. 470; Fed. Cas. 12003), either by a debtor in his own behalf, or by a creditor against a debtor, upon which an order shall be issued adjudicating the debtor a bankrupt. (In re Litchfield, 9 N. B. R. 506; 7 Ben. 259; Fed. Cas. 8385.)

<sup>3</sup> The word "debt," as used in the bankrupt law, is synonymous with claim. (Stokes & Leonard v. Mason, 12 N. B. R. 498.) A speculative option, where the object of the parties is not a sale and delivery of the goods, but a settlement in money on differences—commonly called a "put"—is not a provable debt in bankruptcy. (In re Chandler, 9 N. B. R. 514; 13 Amer. Law Reg. (N. S.) 310; 6 Chi. Leg. News, 229; Fed. Cas. 2590.)

ruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed<sup>1</sup> insolvent

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<sup>1</sup> Traders and merchants have been held to be insolvent in the following cases: When they are unable to pay their debts as they become due in the ordinary course of business (*Ecfort & Petring v. Greely*, 6 N. B. R. 433; *Fed. Cas.* 4260; *Toof v. Martin*, 6 N. B. R. 49; 13 Wall. 40; *Martin v. Toof et al.*, 4 N. B. R. 153; *Fed. Cas.* 9164; *Stranahan v. Gregory & Co.*, 4 N. B. R. 142; *Fed. Cas.* 13522; *In re Lewis et al.*, 2 N. B. R. 145; *In re Kingsbury et al.*, 3 N. B. R. 84; *Fed. Cas.* 7816; *Merchants' National Bank of Hastings v. Truax*, 1 N. B. R. 146; 1 Amer. Law T. Rep. Bankr. 73; *Fed. Cas.* 9451; *Warren v. Bank*, 7 N. B. R. 431; 10 Blatchf. 493; *Fed. Cas.* 17202; *Jackson, Ass. v. McCulloch et al.*, 13 N. B. R. 233; 1 Woods, 433; 1 N. Y. Weekly Dig. 534; *Fed. Cas.* 7140; *Sawyer et al. v. Turpin et al.*, 5 N. B. R. 339; 2 Lowell, 29; *Fed. Cas.* 12410), although the assets of a debtor may be largely in excess of his liabilities (*In re Woods*, 7 N. B. R. 126; 29 Leg. Int. 236; 20 Pittsb. Leg. J. 21; *Fed. Cas.* 17990); and it is no excuse that he might have paid them if time had been given for that purpose. (*Webb, Ass. v. Sachs et al.*, 15 N. B. R. 168; 4 Sawy. 153; 9 Chi. Leg. News, 156; *Fed. Cas.* 17325.) If his debts cannot be made in full out of his property by levy and sale on execution, he is insolvent within the primary and ordinary meaning of the word, and particularly in the sense in which it is used in the Bankrupt Act. (*In re Wells*, 3 N. B. R. 95; 2 Chi. Leg. News, 49; *Fed. Cas.* 17338; *In re Oregon Bulletin, etc. Co.*, 13 N. B. R. 503; 1 Cin. Law J. 87; *Fed. Cas.* 10559. But see *Harrison v. McLaren*, 10 N. B. R. 244; *Fed. Cas.* 6139.) A merchant who had transferred some of his assets as claimed, in fraud of creditors, and who held property enough so that, if it were advantageously disposed of, it might pay all his debts, but failed to pay a few small debts as they became due, was nevertheless held to be insolvent. (*Ecfort & Petring v. Greely*, 6 N. B. R. 433; 4 Chi. Leg. News, 209; *Fed. Cas.* 4260.) Where repeated demands for payment are met by promises to pay a debt at specified times, which are not kept, and where a creditor knows that debtor has other debts greater in amount than his own, he will be presumed to know that the debtor is insolvent, if in fact he is. (*In re Armstrong*, 16 N. B. R. 275; 9 Ben. 212; *Fed. Cas.* 539.) In

within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts; (16)<sup>1</sup> "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee,

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large commercial centers, a failure to meet payments as they become due is deemed insolvency, but in the country the custom of traders is generally different. A person should be held insolvent only when he fails to meet his debts according to the custom of the place of his business. (*Hall, Ass. etc. v. Wager & Fales*, 5 N. B. R. 181; 3 Biss. 28; 5 West. Jur. 538; 3 Chi. Leg. News, 401; Fed. Cas. 5951.) A banker who receives collateral security for the payment of a draft which he cashed on the preceding day has reasonable cause to believe that the drawer is insolvent. (*Merchants' National Bank of Cincinnati v. Cook et al., Trustees*, 16 N. B. R. 391; 95 U. S. 342.) The court may properly charge the jury, "That if the jury find that the quantity and value of the assets of the debtor had not materially diminished from the date when the judgment note was given till the day when he filed his petition in bankruptcy and the day when he was adjudged a bankrupt, they may find that he was insolvent when he gave the judgment note." (*First Nat. Bank of Clarion v. Jones, Ass.*, 11 N. B. R. 381; 21 Wall. 325.)

The words "insolvent" and "insolvency," used in the act of 1867, are not synonymous with the words "bankrupt" and "bankruptcy." The former words are less restricted. (*In re Black et al.*, 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457.) The term "insolvency," when applied to traders, does not mean an absolute inability of the debtor to pay his debts at some future time upon a settlement and winding up of his affairs, but a present inability to pay in the ordinary course of his business as men in trade usually do, although his inability be not so great as to compel him to stop business, and although he may be able to pay his debts at a future time upon the winding up of his concerns. It cannot be held that a debtor ceases to be insolvent because creditors have entered into an agreement to extend the time of payment of their debts. (*Rison v. Knapp*, 4 N. B. R. 114; Fed. Cas. 11861.)

<sup>1</sup> The word "judge," mentioned in section 23 of the act of 1867, is construed to mean or include register. (*In re Bininger & Clark*, 9 N. B. R. 568; Fed. Cas. 1421.)

and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19)<sup>1</sup> "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20)<sup>2</sup> "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-

<sup>1</sup> In the absence of any statute definition to that effect, the word "person" should be construed to include a corporation, unless it appears that it was used in a more limited sense. (In re Oregon Publishing, etc. Co., 18 N. B. R. 199; 10 Amer. Law Rev. 880; 8 Chi. Leg. News, 81; Fed. Cas. 10588; In re Cal. Pac. R. R. Co., 11 N. B. R. 198; 8 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2815.)

<sup>2</sup> A petition in bankruptcy is an action or suit. (In re Comstock, etc. Co., 10 N. B. R. 451; 6 Chi. Leg. News, 418; 22 Pittsb. Leg. J. 25; Fed. Cas. 8077.)

earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year; (28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

[Act of 1867. SEC. 38. *And be it further enacted*, That the filing of a petition for adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor; upon which an order may be issued by the court, or by a register in the manner provided in section four, shall be deemed and taken to be the commencement of proceedings in bankruptcy under this act; . . .]

SEC. 48. *And be it further enacted*, That the word "assignee" and the word "creditor" shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees of that officer. The word "marshal" shall include the marshal's deputies; the word "person" shall also include "corporation;" and the word "oath" shall include "affirmation." . . .]

For contents of petition under Act of 1867, see sec. 4, Title III.

## CHAPTER II.

### CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

SEC. 2. That the courts of bankruptcy as hereinbefore defined, viz, the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents,

*"such as one to remove property claimed by him must be in state  
Court in case he consents to be paid." U.S. Ct. 178 U.S. 524, 11 Fed. 892*

officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by



law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

[Act of 1867. SEC. 1. *Be it enacted* . . . That the several District Courts of the United States be, and they hereby are, constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. The said courts shall be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time, and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in Court. And the jurisdiction hereby conferred shall extend to all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities and conflicting interests of all parties and to the marshalling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all acts, matters, and things to be done under and in virtue of, the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. The said courts shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity. Said courts may sit, for the transaction of business in bankruptcy, at any place in the district, of which place and the time of holding court, they shall have given notice, as well as at the places designated by law for holding such courts.

SEC. 28. . . . Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, . . . and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and if found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt.

SEC. 18. . . . An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

SEC. 49. *And be it further enacted*, That all the jurisdiction, power, and authority conferred upon and vested in the District Court of the United States by this act in cases in bankruptcy are hereby conferred upon and vested in the Supreme Court of the District of Columbia, and in and upon the supreme courts of the several Territories of the United States, when the bankrupt resides in the said District of Columbia or in either of the said Territories. And in those judicial districts which are not within any organized circuit of the United States, the power and jurisdiction of a circuit court in bankruptcy may be exercised by the district judge.]

(1) Courts of bankruptcy have jurisdiction to adjudge a partnership bankrupt, and, if it has jurisdiction of one of the partners, it may have of all and of the administration of the partnership and individual property. (Sec. 5, *a* and *c*.) And in the event petitions are filed against the same person or against different members of a partnership in different courts of bankruptcy, each of which has jurisdiction, the cases shall be transferred by order of the court relinquishing jurisdiction to and be consolidated by the court which can proceed with the greatest convenience to parties in interest. (Sec. 32.)

**Court always open.**—The district court, for the purposes of its bankruptcy jurisdiction, is always open. It has no separate terms. Its proceedings in any pending suit are, therefore, at all times open for re-examination upon application made in an appropriate form. Any order made in the progress of the cause may be subsequently set aside and vacated upon proper showing, provided rights have not become vested under it which will be disturbed by its vacation. (*Sandusky v. First Nat. Bank*, 12 N. B. R. 176; 23 Wall. 289.) In the exercise of its exclusive original jurisdiction it may act in administrative matters or matters of mere discretion as well in vacation as in term time, and a judge sitting at chambers in such matters has the same power and jurisdiction as when sitting in court. (*Shearman v. Bingham et al.*, 7 N. B. R. 490.)

**General.**—A judge who has been a depositor in an insolvent banking institution, but who has sold his claim, is not thereby disqualified from sitting in the matter, although the motive on the part of the purchaser of the claim may have been to remove the disqualification. (*In re Sime & Co.*, 7 N. B. R. 407; 2 Sawy. 320; 5 Pac. Law Rep. 217; Fed. Cas. 12860.) Neither court nor register can be the general adviser of the assignees as to their acts. (*In re Sturgeon*, 1 N. B. R. 181; 2 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 18564.)

**Jurisdiction.**—The United States district court sitting in bankruptcy has full and complete jurisdiction to administer the estate of the bankrupt. (*Allen & Co. v. Montgomery et al.*, 10 N. B. R. 508; *In re Archambrown*, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 504.) This jurisdiction extends to all acts, matters and things to be done under and in virtue of the bankruptcy until the final distribution and settlement of the estate of the bankrupt and the close of proceedings in bankruptcy (*Bucknam v. Dunn et al.*, 16 N. B. R. 470; 2 Hask. 215; Fed. Cas. 2096); the commencement of proceedings in bankruptcy transferring at once to the district court the jurisdiction over the bankrupt, his estate, and all parties and questions connected therewith. (*In re Carow*, 4 N. B. R. 178; 41 How. Pr. 112; Fed. Cas. 2426.) Whenever the jurisdiction of the court is properly and in good faith invoked in the manner prescribed by law, the court is bound to assume and exercise that jurisdiction (*In re Keiler et al.*, 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647), as it has no authority to exercise discretion in the entertainment of actions over which it is given jurisdiction, when properly applied to for the exercise thereof (*Cook v. Waters et al.*, 9 N. B. R. 155); and when jurisdiction is taken it is superior and exclusive in all matters arising under the Bankrupt Act. (*In re Barrow*, 1 N. B. R. 125; 1 Amer. Law T. Rep. Bankr. 63; Fed. Cas. 1057.) A creditor attacking the jurisdiction need not first file formal proof of his debt, as this would import a recognition of the jurisdiction. He must, however, show that he is a creditor and that he has an interest to protect. (*In re Boston H. & E. R. R. Co.*, 6 N. B. R. 209; 9 Blatchf. 101; 8 Amer. L. Rev. 582; Fed. Cas. 1678.)

Where the court is without jurisdiction, no voluntary act of the defendant can give such jurisdiction, and the point can be raised even after the appearance and answer (*Jobbins v. Montague*, 6 N. B. R. 509; Fed. Cas. 7830); and where want of jurisdiction appeared on the petition, but respondents consented to the jurisdiction, the court took notice of the point on its own motion. (*In re Hopkins v. Carpenter et al.*, 18 N. B. R. 839; Fed. Cas. 6686.) It has been held, however, that objection to the jurisdiction over the person of a party may be expressly waived, and the same thing may be done by implication, by means of any act indicating it to be the design of the person entitled to make it, not to insist upon it. (*People ex rel. Jennys v. Brennan*, 12 N. B. R. 567.)

The bankrupt court has a right to determine the question as to fraud

in the contracting of a debt, and it is not bound by a statement in a declaration or complaint made by a party in a state court. (In re Williams and McPheeters, 11 N. B. R. 145; 6 Biss. 233; 7 Chi. Leg. News, 49; Fed. Cas. 17700; In re Wright, 2 N. B. R. 57; 86 How. Pr. 167; 2 Ben. 509; Fed. Cas. 18065.)

**Over corporations.**—The “dissolution” of a corporation under state insolvency laws does not end its existence so as to prevent the jurisdiction of the bankrupt courts from attaching. (In re Independent Insurance Co., 6 N. B. R. 260; Fed. Cas. 7017; Id., 6 N. B. R. 169; 2 Lowell, 97; Fed. Cas. 7018.) Service of the rule to show cause on the cashier of a corporation which has passed into the hands of a receiver is sufficient to enable the bankrupt court to proceed to adjudication. (Platt v. Archer, 6 N. B. R. 465; Fed. Cas. 11213.) A decree adjudging a corporation bankrupt is in the nature of a decree *in rem*, and if the court rendering it had jurisdiction, it can only be assailed by a direct proceeding in a competent court, unless due notice of the petition was never given or the decree is void in form. (New Lamp Chimney Co. v. Ansonia Brass and Copper Co., 13 N. B. R. 385; 91 U. S. 756.)

**In law and equity.**—Under the bankrupt law, the district court has jurisdiction both in law and equity (In re Fendley, 10 N. B. R. 250; 3 Amer. Law Rec. 105; Fed. Cas. 4728; In re Salkey and Gerson, 11 N. B. R. 423; 6 Biss. 269; 7 Chi. Leg. News, 178; Fed. Cas. 12253; In re Bowie, 1 N. B. R. 185; 15 Pittsb. Leg. J. 448; 1 Amer. Law T. Rep. Bankr. 97; Fed. Cas. 1725); and has full equitable discretion to allow a case to be withdrawn from it, provided it can be done without prejudice to the interests of any of the parties who are before it. (In re Indianapolis, Cincinnati & Lafayette R. R. Co., 8 N. B. R. 302; 21 Pittsb. Leg. J. 4; Fed. Cas. 7023.) It has jurisdiction in a suit in equity by the assignee in bankruptcy to set aside conveyances alleged to be fraudulent, although the courts of law may have concurrent jurisdiction. (Pratt v. Curtis, 6 N. B. R. 139; Fed. Cas. 11375.)

**Over liens.**—The bankrupt court has jurisdiction to hear and determine all questions of liens involving rights to property claimed to belong to the bankrupt's estate (In re High and Hibbard, 3 N. B. R. 46; 2 Amer. Law T. 170; 2 Chi. Leg. News, 9; 16 Pittsb. Leg. J. 193; 1 Amer. Law T. Rep. Bankr. 175; Fed. Cas. 6473); and it may enforce a lien against the purchaser of property sold by an assignee subject to such lien. (Bucknam v. Dunn et al., 16 N. B. R. 470; 2 Hask. 215; Fed. Cas. 2096.) But a judgment creditor cannot claim the jurisdiction of the court in bankruptcy for the collection of a debt which is fully secured by the only lien on real estate. (In re Johann, 4 N. B. R. 143; Fed. Cas. 7331.) A prior lien gives a prior claim, and the district court may ascertain and liquidate a lien. (In re Winn, 1 N. B. R. 131; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.)

**Residence or domicile.**—If the defendants do not reside within the district, the district court has no power to obtain jurisdiction over their

persons by any service of process otherwise than in accordance with the rule (*Hyslop v. Hoppock*, 6 N. B. R. 557; 5 Ben. 533; Fed. Cas. 6989); and where defendants appeared on the return day and consented to the adjudication, the court subsequently dismissed the proceedings on objection from other creditors, on the ground that the bankrupts had never resided, or carried on business, in the state. (*In re Fogarty et al.*, 4 N. B. R. 148; 1 Sawy. 233; 5 Amer. Law Rev. 163; Fed. Cas. 4895.) If a party who is proceeded against by summary petition consents to a reference of the case to a register to take proof, he thereby gives the district court jurisdiction over his person, and cannot impeach its decrees in a collateral action. (*People ex rel. Jennys v. Brennan*, 12 N. B. R. 567.) In a dispute over the ownership of a fund controlled by the assignee in bankruptcy, the district court has jurisdiction, without reference to the residence of the parties. (*In re Sabin*, 18 N. B. R. 157; 10 Chi. Leg. News, 364; 8 Cin. Law Bul. 625; Fed. Cas. 12195; *Markson & Spaulding v. Heaney*, 4 N. B. R. 165; 3 Chi. Leg. News, 153; Fed. Cas. 9098; *Payson v. Dietz*, 8 N. B. R. 193; 5 Chi. Leg. News, 484; 30 Leg. Int. 313; Fed. Cas. 10861.)

The word "residence," in section 11 of the act of 1867, is not synonymous with "domicile," and where a person, resident with his family in one place, buys a stock of goods in another, and goes there for business, leaving his family in the former place, the petition in bankruptcy is properly filed in the place where he carries on such business. (*In re Watson*, 4 N. B. R. 197; Fed. Cas. 12272.) Where a bankrupt born in one state becomes domiciled in another, but leaves it with no intention of returning, and finally returns to his native state, and shortly thereafter files his application in bankruptcy, the act of leaving the former domicile, with no intention of returning, at once revives the domicile of origin. (*In re Wiggin*, 1 N. B. R. 90.) A petition can only be filed against a firm in its domicile and only place of business. (*Cameron v. Canieo & Co.*, 9 N. B. R. 527; Fed. Cas. 2340.)

A debtor may file his petition in the district in which he has resided or carried on business for the six months next immediately preceding the filing of the petition, or for the longest period during or within such six months that he has resided or carried on business in any district (*In re Foster & Pratt*, 8 N. B. R. 57; 8 Ben. 386; Fed. Cas. 4903); and a court is without jurisdiction to entertain an application for discharge unless the bankrupt has so resided or carried on business immediately preceding the time of filing, or for the longest period during such six months. (*In re Leighton*, 5 N. B. R. 95; 4 Ben. 457; Fed. Cas. 8231.) Where a petitioner in bankruptcy carried on business for many years in one city and then retired and moved to another, but is employed in the former place, his petition is properly filed in the court in which his business was conducted. (*In re Belcher*, 1 N. B. R. 202; 2 Ben. 468; Fed. Cas. 1237.) A clerk employed in a commercial house in one city and residing in another state cannot be regarded as having carried on business in said city for six months immediately preceding the filing of his peti-

tion. (In re Magie, 1 N. B. R. 153.) A., being a member of a firm doing business in one state but domiciled in another, moved to dismiss the proceeding in bankruptcy in the state of his domicile and have the cause removed to the district where the business was conducted and his partner resided and had filed petition. The court directed that proceedings be stayed. (In re Smith, 3 N. B. R. 15.) The allegation of residence or carrying on of business, in the petition, is the allegation of a jurisdictional fact, and the petition must contain an allegation in that respect. (In re Beals et al., 17 N. B. R. 108; 9 Ben. 223; Fed. Cas. 1165.)

The fact that a person has an office at which he receives mail and settles up the old business of an insolvent firm of manufacturers of which he was a member, and which has ceased business as manufacturers, is not sufficient to sustain an allegation of carrying on business within the jurisdiction of a particular bankruptcy court. (In re Little, 2 N. B. R. 97; 3 Ben. 25; 1 Chi. Leg. News, 123; Fed. Cas. 8391.) Where a person acts as agent and attorney for his brother in buying and selling merchandise, at an office with a sign having his brother's name on it, and was well known by those who had dealings with him to be doing such business at that office, he carries on business within the meaning of the act of 1867. (In re Bailly, 1 N. B. R. 177; 2 Ben. 437; Fed. Cas. 753.) Neither the actual nor alleged residence or place of business of a bankrupt can be directly made the ground of opposition to his discharge. (In re Burk, 3 N. B. R. 76; Deady, 425; 2 Amer. Law T. Rep. Bankr. 45; Fed. Cas. 2156.)

The "usual place of abode" of a corporation should be construed to mean the principal office of the corporation. (In re Cal. Pac. R. Co., 11 N. B. R. 193; 3 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2315.)

(2) Allowance and proof of claims.—Provision for the proof and allowance of claims is set forth at length under section 57. The receiving and filing of a proof of debt concludes nothing, and the power still remains in the court to revise and correct or reject such proof altogether. (In re Merrick, 7 N. B. R. 459; Fed. Cas. 9433.) And if creditors seek a re-examination of claims, they must first file a petition for re-examination. (In re Tift, 17 N. B. R. 502; Fed. Cas. 14029.) Under the act of 1867 it was held that, when an assignee files a petition for a re-examination of a proof, the creditor need only offer himself for examination, and the assignee must introduce such opposing proof as he may have, if he desires to contest the proof of the claim. (In re Robinson, 14 N. B. R. 120; 8 Ben. 406; Fed. Cas. 11938.) If a claim has been rejected by the assignee and returned to the register for further proof, it should not be ordered paid without notice to the assignee and opportunity given to answer creditor's petition. (In re Mittlerer & Co., Ex parte Rutherglen, 3 N. B. R. 9; Chase, 276; Fed. Cas. 9674.)

(3) Control of a bankrupt's property.—When the bankrupt's estate is such that it may deteriorate through the failure of the creditors to appoint a trustee as required (sec. 41), or he has failed to qualify, and the

court is unwilling to make an immediate appointment, then this provision permits the temporary appointment of receivers or marshals to take charge of the property until such trustee qualifies. No compensation appears to have been specifically provided for this service of receivers.

The estate surrendered by the bankrupt is placed in the custody of the court sitting in bankruptcy, and the officer appointed to manage it is accountable to the court appointing him and to that court alone. (In re Carow, 41 N. B. R. 178; 4 How. Pr. 112; Fed. Cas. 2426.) If a lease is terminated by condition broken, after the filing of a petition and before the appointment of an assignee, the property is also in the custody of the court; and a re-entry by the lessor, or other interference without leave of the court, is in contempt of its authority. (In re Steadman, 8 N. B. R. 819; Fed. Cas. 13330.) A warrant commanding the marshal to take possession provisionally of all the property and effects of the bankrupt, and of all the goods, assets and property conveyed by the bankrupt to another, whether by bill of sale or otherwise, is beyond the power of the court in so far as it commands the marshal to take property conveyed before the filing of a petition by the bankrupt. (In re Harthill, 4 N. B. R. 181; Fed. Cas. 6161.)

The court will appoint receiver, where voluntary assignees fail to properly conduct the business in their charge (In re Sedgwick, Ass., v. Place et al., 8 N. B. R. 85; 3 Ben. 360; Fed. Cas. 12619), or after adjudication and before the selection of an assignee, for the temporary care and custody of the estate, when special circumstances render it desirable (Lansing v. Manton, 14 N. B. R. 127; 3 N. Y. Weekly Dig. 112; Fed. Cas. 8077); but will not appoint a provisional assignee upon the ground that the debtor removed goods in fulfillment of an existing contract made long before the commencement of bankruptcy proceedings, as such act is not fraudulent. (National Bank of Pittsburg v. The Brady's Bend Iron Co., 5 N. B. R. 491; 19 Pittsb. Leg. J. 5; 3 Chi. Leg. News, 402; 28 Leg. Int. 317; 4 Amer. Law T. 168; 8 Phila. 171; 3 Pittsb. Rep. 326; 1 Leg. Op. 202; 1 Amer. Law T. Rep. Bankr. 272; Fed. Cas. 9018.)

It was held, under the act of 1867, that so long as the property remains in the receptor's hands or the hands of the debtor, the delivery of attached property to the receptor does not divest the attachment lien (Rowe v. Page, 18 N. B. R. 366), and a person was held to be entitled to a judgment *in rem*, and could levy execution upon the money which might be collected from the receptor. (Batchelder v. Putnam, 18 N. B. R. 404.)

(4) **Trial of offenses.**—Penalties for violating the provisions of this act are provided by section 29, but the offender is exempt from prosecution unless the indictment is found or the information is filed in court within one year after the commission of the offense. The alleged offender has the right to a trial by jury. (Sec. 19c.) The United States circuit courts have

concurrent jurisdiction with courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act. (Sec. 28c.)

(5) Upon proper showing the court is endowed by this provision with authority to prevent a sacrifice of the estate at times of money depressions, absence of a market, etc., and may permit a continuance of the business for a limited period.

(6) **Substitution of parties.**—Where there appears to be an adverse interest in any one not before the court, the bankrupt court cannot adjudicate on the same without that person being properly before it, and without setting in motion the machinery of a court for the purpose of litigating any proposed rights. (In re Pierce et al., 15 N. B. R. 449; 7 Biss. 426; 9 Chi. Leg. News, 300; 15 Alb. Law J. 517; Fed. Cas. 11139.) Strangers to the proceedings in bankruptcy, not served with process, and who have not voluntarily appeared and become parties to such litigation, cannot be compelled to come into court under a petition for a rule to show cause. Such parties must be proceeded against by a suit at law or in equity. (Smith v. Mason, 6 N. B. R. 1; 14 Wall. 419.)

(7) **Suits of bankrupts.**—A trustee may be ordered by the court to enter his appearance and defend any pending suit against a bankrupt (sec. 11b), and with the approval of the court he may be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him. (Sec. 11c.) United States circuit courts have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants, concerning the property acquired or claimed by trustees, to the same extent only as though bankrupt proceedings had not been instituted and such controversies had been between the bankrupt and such adverse claimant. (Sec. 23a.) The trustee will be subrogated to the right of the holder of any lien created within four months of filing the petition, and may enforce the same. (Sec. 67c.)

**Property of bankrupt.**—It is such trustee's duty to account for and pay over to the estate all interest received by him upon property of estate in his charge (47—1), and collect and reduce to money the property of the estate for which he is trustee under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest. (Sec. 47—2.)

All property of the bankrupt comes into the power of the court the moment the voluntary petition is filed, and the court has exclusive control of the same. (Byrd, Ass., v. Harrold et al., 18 N. B. R. 433; 26 Pittsb. Leg. J. 315; Fed. Cas. 229.) It has power to take possession of personal assets in the hands of a vendee, purchased before adjudication, upon *ex parte* proof, before trial of issue of title. (In re Hunt, 2 N. B. R. 166; 1 Chi. Leg. News, 179; Fed. Cas. 6881.) It may make any assessment upon



the stockholders of a bankrupt company as fully as the stockholders or directors could have done. (*Upton, Ass., v. Hansbrough*, 10 N. B. R. 868; 3 Biss. 417; 5 Chi. Leg. News, 242; 7 West. Jur. 238; Fed. Cas. 16801.) But it has no authority to deprive the assignee of the possession of the bankrupt's property without due process of law, unless the parties consent to a trial by the court. (*Wood Mowing and Reaping Machine Co. v. Brook*, 9 N. B. R. 895; 2 Sawy. 576; Fed. Cas. 17980.)

**Sales.**—The form of an order is sufficient that directs the sale of the right, title, etc., of the bankrupt, and it need not direct the sale of the right, title, etc., which the general assignee acquired by the decree of bankruptcy. (*Smith v. Scholtz et al.*, 17 N. B. R. 520.) If there has been a recovery of judgment before bankruptcy, the sheriff may go on and sell, but the bankrupt court has the right to cause the sale to be made under its supervision and control. (*Allen & Co. v. Montgomery et al.*, 10 N. B. R. 503.) The bankrupt court has authority to order the sale of property pledged or mortgaged by a bankrupt, the proceeds to be brought into court to await the determination of the rights of the pledgee or mortgagee. (*In re Columbian Metal Works*, 8 N. B. R. 18; Fed. Cas. 3039.) It has the power to sell free of mortgage lien. (*In re Barrow*, 1 N. B. R. 125; 1 Amer. Law T. Rep. Bankr. 63; Fed. Cas. 1057; *In re Kahley*, 4 N. B. R. 124; 3 Chi. Leg. News, 85; 2 Leg. Gaz. 405; Fed. Cas. 7593; *In re Salmons*, 2 N. B. R. 19; 15 Pittsb. Leg. J. (O. S.) 541; Fed. Cas. 12268; *Ray v. Brigham et al.*, 12 N. B. R. 145; *Markson et al. v. Haney*, 12 N. B. R. 484.)

(8) **Closing estates.**—A trustee is required to close up the estate as expeditiously as is compatible with the best interests of the parties in interest (sec. 47—3), and will prepare for the final meeting of the creditors a detailed statement of the administration of the estate (sec. 47—7), and make final reports and file final accounts with the court fifteen days before the day fixed for the final meeting of the creditors (sec. 47—8).

(9) **Compositions.**—Bankrupt may offer terms of composition to creditors after examination in open court or at a creditors' meeting, and the schedule of his property and list of his creditors has been filed in court (sec. 12a), which composition shall be confirmed if the court is satisfied it is for the best interest of the creditors, that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith, and have not been made or procured by means, promises or acts forbidden, etc. (sec. 12d). The judge may, upon the application of parties in interest, filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case, if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that knowledge thereof has come to the petitioners since the confirmation of such composition

(sec. 13), in which event the trustee, upon his appointment and qualification (sec. 44), becomes vested with the title to all of the bankrupt's property as of the date of filing the final decree setting the composition aside (sec. 70*d*). Upon the confirmation of a composition, the consideration is to be distributed as the judge directs, and the case dismissed; when not confirmed, the estate is to be administered as otherwise provided. (Sec. 12*c*.) The confirmation discharges the bankrupt, except as to debts agreed to be paid by the terms thereof, or such as would not be affected by a discharge (Sec. 14*c*.)

(10) **Certification of findings by referees.**—Referees are required to make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit the same to the judges. (Sec. 39—5.) Referees are required to consider all petitions referred to them by the clerks and make the adjudication or dismiss the petition. (Sec. 38—1.)

(11) **Exemptions.**—With the schedule of the bankrupt's property, which must be filed in court by him within ten days after the adjudication, unless further time is granted, if involuntary bankrupt, and with the petition if a voluntary bankrupt, there must be filed in triplicate a claim for such exemptions as he may be entitled to, one copy to be for the clerk, one for the referee, and one for the trustee. (Sec. 7—8.) As soon as practicable after the appointment of the trustee, he is required to set apart the bankrupt's exemptions and report the items and estimated value thereof to the court. (Sec. 47—11.) By operation of law the trustee is vested with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as his property is exempt. (Sec. 70.)

(12) **Discharge.**—Applications for discharge must be made after the expiration of one month and within the next twelve months subsequent to the adjudication of bankruptcy in the court in which the proceedings are pending, which time may be extended six months upon a proper showing. (Sec. 14*a*.) After a hearing the bankrupt should be discharged, unless he has committed an offense punishable by imprisonment as provided herein, or, with a fraudulent intent to conceal his true financial condition, has destroyed or failed to keep books of account, etc., from which his true condition might be ascertained. (Sec. 14*b*.) Within one year after the discharge has been granted, the judge may revoke it upon trial, if it is made to appear that it was obtained through the fraud of the bankrupt, and knowledge of such act has come to the petitioner since the granting of the discharge, and that the actual facts did not warrant the granting thereof. (Sec. 15.) The confirmation of a composition discharges the bankrupt except as to debts agreed to be paid by the terms thereof, or such as would not be affected by a discharge. (Sec. 14*c*.)

(13) **Contempt.**—The court may punish for contempt if the bankrupt refuses or neglects to surrender any portion of his property, after being ordered (*In re Salkey and Gerson*, 11 N. B. R. 423; 6 Biss. 269; 7 Chi. Leg. News, 178; Fed. Cas. 12253); or in case of an attaching creditor, who, having been enjoined from further proceeding against the property attached, makes no effort to stop his suit, but allows his attorney to proceed, or assigns his claim to an assignee who prosecutes the suit and receives the proceeds of the sheriff's sale (*Hyde v. Bancroft & Steiner*, 8 N. B. R. 24; Fed. Cas. 6966); or who sells property in defiance of an injunction (*In re Atkinson*, 7 N. B. R. 143; 5 Amer. Law T. Rep. 423; Fed. Cas. 606); or where an injunction was issued restraining an attorney, with knowledge of pending bankruptcy proceedings of his client, from further proceeding with an application for appointment of a receiver, notwithstanding which he had the receiver appointed (*In re South Side R. R. Co.*, 10 N. B. R. 274; Fed. Cas. 18190); or where bankrupt made an assignment and creditors attached the property in the hands of the assignee, but before the assignee had been appointed other creditors restrained the attaching creditors from proceeding against the property attached the court held, on motion to vacate the injunction, that it could grant the injunction and punish the attaching creditors for disregarding it (*In re Ulrich et al.*, 8 N. B. R. 15; Fed. Cas. 14328); or where one obtains a foreclosure of the mortgaged premises, pending proceedings in bankruptcy, without proof of the mortgage debt or leave of the court first obtained (*Phelps v. Sellick*, 8 N. B. R. 390; Fed. Cas. 11079); or where a lease is terminated by condition broken, after the filing of a petition, and before the appointment of an assignee, lessor re-enters or interferes without leave of court (*In re Steadman*, 8 N. B. R. 319; Fed. Cas. 18380).

Where a restraining order is asked for at the commencement of proceedings in bankruptcy against any person other than the debtor, no judgment of contempt can be had against such party for disregard of such order, unless it was granted on a separate petition, distinct from that against the bankrupt. (*Creditors v. Cozzens & Hall*, 8 N. B. R. 78; 2 West. Jur. 349; 16 Pittsb. Leg. J. 236; Fed. Cas. 3378.) When a court of bankruptcy has no power to discharge a judgment, it cannot interfere to prevent its enforcement by imprisonment, unless necessary to the exercise of its jurisdiction. (*In re Pettis*, 2 N. B. R. 17; 7 Amer. Law Reg. (N. S.) 695; Fed. Cas. 11046.) Nor can it enforce an order which is in effect a final judgment for the payment of money, whether the proceeding in which it is made is of equitable or legal cognizance. (*In re Atlantic Mut. Ins. Co.*, 17 N. B. R. 368; 9 Ben. 337; Fed. Cas. 629.) Nor will it punish a bankrupt for contempt when it is satisfactorily purged. (*In re Hayden*, 7 N. B. R. 192; Fed. Cas. 6257.)

(14) **Extradition.**—Whenever a bankrupt is found within the jurisdiction of a court other than the one issuing the warrant for his apprehension, he may be extradited in the same manner in which persons

under an indictment are now extradited from one district within which a district court has jurisdiction to another. (Sec. 10.)

(15) **Orders.**—While district courts have no power to make general rules in bankruptcy (In re Kennedy et al., 7 N. B. R. 337; Fed. Cas. 7699), they are not hampered by such technical rules as will prevent the doing of what is just and for the protection of the state, even if it required the revocation of an order once made. (Samson v. Burton, 6 N. B. R. 403.)

(16) **Contempt before referees.**—In proceedings before a referee no person shall disobey or resist any lawful order, process or writ; misbehave during a hearing; neglect to produce, after having been ordered to do so, any pertinent document; or refuse to appear after having been subpoenaed; or refuse to take the oath as a witness or be examined according to law. (Sec. 41a.) In case a person violates any of these provisions, the referee shall certify the facts to the judge, who shall, in a summary manner, hear the evidence as to the acts complained of, and impose such imprisonment as for the like contempt committed before a court of bankruptcy, etc. (Sec. 41b.)

(17) **Assignees; appointment and removal.**—Assignees in bankruptcy are public officers whose appointment must be approved by the judge of the district court (Morris et al. v. Swartz, 10 N. B. R. 305); but an election persuaded by the importunity of the proposed assignee exercised upon disinterested creditors will not be approved. (In re —, a Bankrupt, 2 N. B. R. 100.) The removal of an assignee rests in the discretion of the court, but it is a legal discretion, and cause must be shown to render the removal either necessary or expedient. (In re Blodgett et al., 5 N. B. R. 472; Fed. Cas. 1552; In re Mallory, 4 N. B. R. 38; Fed. Cas. 8990.)

A resolution of creditors of a bankrupt, committing his estate for settlement and distribution to a trustee and nominating a committee composed of two members, one of whom is the trustee, to supervise and direct the trustee, will not be confirmed. (In re Stillwell, 2 N. B. R. 164; Fed. Cas. 13447.)

See also sections 44 and 46.

(18) **Costs.**—As a general rule no charge for professional services of counsel to an assignee rendered prior to the appointment of the assignee will be allowed. (In re N. Y. Mail S. S. Co., 2 N. B. R. 137; 1 Chi. Leg. News, 210; Fed. Cas. 10210.) In respect to services rendered to a bankrupt prior to adjudication, an attorney is a general creditor, and must prove his debt in the usual form. For services rendered after adjudication and before choice of assignee, an attorney's fee may be allowed, if it be clearly shown that the services were properly and necessarily rendered for the purpose of benefiting or preserving the estate of the bankrupt in the interest of the general creditors. (In re Jaycox and Green, 7 N. B. R. 140; Fed. Cas. 7239.) The court will order the payment of

such fees out of the estate upon written approval of the assignee (In re Montgomery, 8 N. B. R. 35; 8 Ben. 364; Fed. Cas. 9726); and a register may certify to the court the amount he has allowed counsel for assignee for revision or approval of the court. (In re Warshing, 5 N. B. R. 350; Fed. Cas. 17209.)

Counsel fees may be allowed petitioning creditors in a petition in *sevitum* to have a creditor adjudged a bankrupt (In re Waite, 2 N. B. R. 146; In re The New York Mail Steamship Co., 3 N. B. R. 155; 7 Blatchf. 178; 8 N. B. R. 185; Fed. Cas. 10208); and they are entitled to a reasonable allowance for expenses incurred by them in procuring an adjudication (In re Mittledorfer, 3 N. B. R. 1; Chase, 288; Fed. Cas. 9675), as where solicitors prepare partnership and individual schedules for involuntary bankrupts. (In re Andrews and Jones, 11 N. B. R. 59; 22 Pittsb. Leg. J. 41; Fed. Cas. 370.) They have been allowed debtor's counsel in case of involuntary bankruptcy, where there was a contest as to whether acts of bankruptcy had been committed, and whether the debtor should be adjudged a bankrupt, out of the assets of the bankrupt estate. (In re Portsmouth Savings Fund Society, 11 N. B. R. 308; 2 Hughes, 239; Fed. Cas. 11298.)

Where attachment proceedings are not instituted with a view of obtaining a preference, but were merely auxiliary to bankruptcy proceedings, and so for the benefit of all creditors, the costs and expenses of the former proceedings will be allowed. (In re Ward, 9 N. B. R. 349; Fed. Cas. 17145.)

The allowance of costs has been refused creditors in the following cases: For expenses in an effort to obtain a preference (In re Archibrown, 8 N. B. R. 429; Fed. Cas. 503); retainer paid attorneys, or for any services rendered by attorney after adjudication of the debtor bankrupt (In re Comstock et al., 9 N. B. R. 88; Fed. Cas. 3075); an attaching creditor whose attachment is set aside by bankruptcy proceedings, unless it is shown that the attachment was employed in aid of the proceedings and to the benefit of the creditors generally. (In re Irons & Coon, Ex parte Adler, 18 N. B. R. 95; Fed. Cas. 7067.) But creditors have been held liable for costs when they petition against discharge of bankrupt upon frivolous or unsuccessful charges (In re Eidom, 3 N. B. R. 39; Fed. Cas. 4315; In re Robinson & Chamberlain, 3 N. B. R. 17; Fed. Cas. 11948); or, where the petition is dismissed by the order of the court, the debtor is entitled to recover from the petitioner the same costs that are allowed by law to a party recovering in equity (Dundore v. Coats & Bros., 6 N. B. R. 304; Fed. Cas. 4142); or where he has full knowledge of the condition of his insolvent debtor, receiving a preference, he should be taxed with the costs of the petition of the assignee to expunge. (In re Forsyth and Murtha, 7 N. B. R. 174; Fed. Cas. 4948.)

Where bankruptcy proceedings are mainly for the benefit of secured creditors, they should defray the costs of the suit, and no more of the

burden than the ratable portion of interest in the assets sought to be recovered should be placed upon the general creditors; and, if they were for the benefit of the latter, the circumstances might be such as would require those applying to defray the expenses in the first instance to be refunded, on recovery, out of proceeds. (*Freeland & Gerson v. Holloman et al.*, 9 N. B. R. 331; Fed. Cas. 5081.)

The courts have declined to allow costs or attorneys' fees where a debtor made an assignment and subsequently, within six months, was declared a bankrupt. (*In re Cohn*, 6 N. B. R. 379; Fed. Cas. 2966.) And where a mere general allowance was made in a decree annulling a voluntary assignment for creditors, of the reasonable charges and expenses of the voluntary assignee, it will not include expenses of a proposed account in the state court. (*Burkholder et al. v. Stump*, 4 N. B. R. 191; 8 Phila. 172; Fed. Cas. 2165.) Costs and commissions stipulated to be paid on foreclosure of a mortgage will not be allowed when the proceedings to foreclose are invalid. (*In re Devore*, 16 N. B. R. 56; 24 Pittsb. Leg. J. 186, 187; Fed. Cas. 3347.)

It has been held that an assignee may be allowed to charge for court fees in drafting order of composition, publishing notice of appointment, advertising and posting hand-bills, recording assignment, stationery and postage, and for his legal commissions. (*In re Davenport*, 3 N. B. R. 18; *In re Pegues*, 3 N. B. R. 9; *In re Tully*, 3 N. B. R. 19; 2 Amer. Law T. 136; Fed. Cas. 3587.) An assignee, clerk of the bankrupt's attorney, who is charged with mismanagement, and whose removal is asked for by the creditors, will be removed, but he will be protected against costs where it appears that he acted in entire good faith. (*In re Mallory*, 4 N. B. R. 38; Fed. Cas. 8950.) Where a bill of complaint has been filed by an assignee without sufficient cause, but the circumstances are not so clear as to require any imputation of his good faith in the prosecution of the suit, the costs will be paid out of the estate in the hands of the assignee. (*Coxe v. Hale*, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310.) A mortgagee in possession being entitled to retain all property upon which his mortgage was valid, on a sale of such property by order of the district court in bankruptcy should only be charged with the reasonable expenses of the sale of such property and not with any portion of the costs in bankruptcy. (*In re Eldridge*, 4 N. B. R. 163; Fed. Cas. 4330.) The costs upon the petition for a discharge of involuntary bankrupts, the hearing, etc., must be paid out of the funds in the assignee's hands. (*In re Olds*, 4 N. B. R. 37; Fed. Cas. 10184.)

(19) *Transfer of cases.*—Where petitions are filed against the same person, or against different members of a partnership in different courts of bankruptcy, each of which has jurisdiction, the cases shall be transferred, by order of the court relinquishing jurisdiction, to and be consolidated by the court which can proceed with the same for the greatest convenience of the parties in interest. (Sec. 32.)

# KEESLING & KEESLING

## CHAPTER III.

### BANKRUPTS.

**Sec. 3. Acts of bankruptcy.**—*a.* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

[Act of 1867. Sec. 39. *And be it further enacted*, That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, district, or Territory of which he is an inhabitant, with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court of any State, district, or Territory, within which such debtor resides or has property founded upon a demand in its nature

provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law of such State, district, or Territory applicable thereto, for a period of seven days; or has been actually imprisoned for more than seven days in a civil action, founded on contract, for the sum of one hundred dollars or upwards; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits, or give any warrant to confess judgment; or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act; or who, being a banker, merchant or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy. . . .]

**Acts of bankruptcy.**—They may, in general, be considered under two classes, *i. e.*, those resulting from insolvency, and those which are dishonest or fraudulent. If of the latter class, and accruing within four months prior to the filing of the petition, they may be avoided, if it is to the interest of the estate, and the beneficiary of such fraudulent acts will be compelled to disgorge any property so acquired, if tangible and accessible. (Sec. 67.) A preference given within four months before the filing of the petition, or afterwards, but before the adjudication, where the beneficiary had reasonable cause to believe that it was intended to give a preference, is voidable (sec. 60), and the lien created while insolvent, or in fraud within four months of the filing of the petition, will be dissolved. (Sec. 67.) The word "conceal" is defined to include secrete, falsify and mutilate. (Sec. 1—22.)

Section 3 of the law of 1898 defines five acts of bankruptcy. The first three definitions of such acts follow closely the definitions given in section 39 of the act of 1867. The fourth and fifth definitions have no counterpart in the act of 1867. The law of 1867 specified two acts of bankruptcy which are omitted from the present statute, namely, the arrest and holding in custody of a debtor, under process of execution, for a period of seven days; and the fraudulent suspension of payment of commercial paper by a banker, merchant or trader for a period of fourteen days.



**Conveyances and transfers constituting acts of bankruptcy.**—The word "transfer" includes sale and every other and different mode of disposition of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift or security. (Sec. 1—25.) If a debtor intends by his act to delay, hinder or defraud his creditors, or to give a preference to any of them, or to defeat or delay the operation of the Bankrupt Act, he commits an act of bankruptcy, however innocent the act of the preferred creditor or the person to whom the transfer is made. (In re Drummond, 1 N. B. R. 10; 1 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 4098.) The conveyance of his property affords a very violent presumption of a fraudulent intent so far as existing creditors are concerned. (In re Alexander, 4 N. B. R. 45; 18 Pittsb. Leg. J. 81; 8 Amer. Law T. 280; 1 Amer. Law T. Rep. Bankr. 288; Fed. Cas. 161.)

The following have been held to be acts of bankruptcy and void: A purchaser who buys goods, intending, at the time of the purchase, not to pay for them (In re Alsberg, 16 N. B. R. 116; Fed. Cas. 261); a debtor who has assigned for the benefit of his creditors, and retains, through the agency of the assignee, a portion of the estate, and converts to his own use an amount greater than he would be entitled to hold under the exemption laws (Farrin v. Crawford et al., 2 N. B. R. 181; 7 Chi. Leg. News, 842; Fed. Cas. 4686); transfers made to defeat the operation of the law so far as they stand in the way of enforcing its provisions, where the proceedings are instituted within the time prescribed (Stevenson et al. v. McLaren et al., 14 N. B. R. 408; Beattie v. Gardner et al., 4 N. B. R. 106; Fed. Cas. 1195; In re Cowles, 1 N. B. R. 42; 1 West. Jur. 367; Fed. Cas. 8297); any act the effect of which is to evade the provisions of the act (Webb, Ass., v. Sachs et al., 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17325); conveyances not made in the usual and ordinary course of business of debtors. (Reson v. Knapp, 4 N. B. R. 114; Fed. Cas. 11861; Babbitt v. Walbran & Co., 4 N. B. R. 30; 3 Chi. Leg. News, 285; Fed. Cas. 694.)

In determining whether a transaction is made in the usual and ordinary course of business, the question is not whether such transactions are usual in the general conduct of business throughout the community, but whether they are according to the usual course of business of the particular person whose conveyance is in question. (Reson v. Knapp, 4 N. B. R. 114; Fed. Cas. 11861.) Payments, sales or transfers of any character, declared void by the bankrupt law, are only void against persons claiming under proceedings in bankruptcy or in course of administration of a bankrupt's estate in a court of bankruptcy. (Berryman v. Allen, 15 N. B. R. 118.) An assignment, though voidable at the suit of the assignee, is not void. (Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; Weekly Notes Cas. 560; Fed. Cas. 18204.)

**Chattel mortgage.**—A chattel mortgage is a disposition of property out of the ordinary course of business. (United States v. Bayer, 18 N. B.

R. 88; Fed. Cas. 14548.) A fraudulent chattel mortgage on a bankrupt's stock of goods to secure an alleged debt, made with intent to delay, hinder or defraud creditors, is an act of bankruptcy (In re McKibben, 12 N. B. R. 97; Fed. Cas. 8859); and so is a chattel mortgage which permits the mortgagor to dispose of the goods in due course of trade, without reference to the good faith of the mortgage debt, or the intentions of the mortgagor as to fraud (In re Foster, 18 N. B. R. 64; 10 Chi. Leg. News, 315; Fed. Cas. 4964); a bill of sale of personalty in which there is no change in possession of the property, the first owner taking back a writing in the nature of a lease. (In re Gurney, 15 N. B. R. 373; 7 Biss. 414; 9 Chi. Leg. News, 255; 4 Law & Eq. Rep. 28; Fed. Cas. 5873.)

**Sale of goods.**—The transaction is void against creditors where household furniture in a dwelling inhabited by the owner and another person is transferred to such other person by a bill of sale without any other circumstances to indicate actual possession (Allen v. Massey, 4 N. B. R. 75; 2 Chi. Leg. News, 309; Fed. Cas. 231); also a conveyance absolute upon its face, by which the grantor, in failing circumstances, secretly reserves the right to possess for a limited period under a parol agreement as part of the consideration (Lukins v. Aird, 2 N. B. R. 27; 24 Wall. (U. S.) 78); also a sale of a stock of goods in gross, not made in the usual and ordinary course of business of the debtor, who is a retail dealer and merchant. (In re Deane & Garret, 2 N. B. R. 29; 15 Pittsb. Leg. J. 581, 583; Fed. Cas. 3700.) In an action by the assignee to recover for goods sold by the bankrupt shortly before commencement of bankruptcy proceedings, the burden is on the plaintiff to show a guilty collusion to defraud creditors, (Dickinson v. Adams, 17 N. B. R. 380; 4 Sawy. 257; Fed. Cas. 3896.) Where a bankrupt sells his entire stock below cost, and the purchaser resells it at an advance, the last purchaser being informed at the time of the circumstances of the first purchase, both sales are void as to the assignee. (Abraham and Daniel Walbrun v. Babbitt, Ass., 9 N. B. R. 1; 16 Wall. 577.) A purchaser of goods who assumes debts of the vendor as part consideration, and sells them leaving the debts unpaid, which the vendor is compelled to discharge, commits an act of bankruptcy, and is liable to the vendor for the amount of the debts assumed. (In re Phelps v. Clasen, 3 N. B. R. 22; Woolw. 204; 2 West. Jur. 221; Fed. Cas. 11074.)

**Transfer by deed.**—A deed not at first fraudulent may become so by being concealed, as by its concealment persons may be induced to give credit to the grantor. (Barker v. Smith et al., 12 N. B. R. 474; 2 Woods, 87; 2 Amer. Law T. Rep. (N. S.) 386.) The date of the execution and delivery of deeds, and not the date named therein, is the time from which to reckon the six months within which a petition in bankruptcy is to be filed, where the deed is intended to defraud creditors. (In re Rooney, 6 N. B. R. 163; Fed. Cas. 12032.)

**Conveyance to wife or children.**—A voluntary conveyance made by a person not indebted at the time, in favor of his wife or children, can-

not be impeached by subsequent creditors on the ground of its being voluntary. It must be shown to have been fraudulent or made with a view to future debts. (*Barker v. Smith et al.*, 13 N. B. R. 474; 2 Woods, 87; 2 Amer. Law T. Rep. (N. S.) 386.) A conveyance by a father to his sons, in consideration of his support, is fraudulent as to his creditors, and would be a cause of bankruptcy at the instance of creditors. (In re Johann, 4 N. B. R. 148; Fed. Cas. 7881.) And so is a voluntary conveyance settling property upon the wife and family of the grantor, if the grantor be indebted at the time to such an extent that the settlement will embarrass him in the payment of his debts, although the debts due may be subsequently paid in the course of business. (*Antrives v. Kelly et al.*, 4 N. B. R. 189.) Where the wife of a bankrupt purchases with her own money a share in a firm by which her husband is employed as manager, receiving a share of the profits, the wife rendering no service, but participating in the profits, her share of which, together with that of the bankrupt, not exceeding a fair remuneration for his services, the bankrupt is virtually a partner, and there is wilful concealment of his assets. (In re Rathbone, 2 N. B. R. 89; 8 Ben. 50; 1 Amer. Law Rep. Bankr. 114; 1 Chi. Leg. News, 107; Fed. Cas. 11581.) A loan by an insolvent father to his son, who makes a gift of the amount of the loan to his mother by the purchase of a house in her name, is a fraud upon the creditors of the father. (In re Eldred, 8 N. B. R. 61; 1 Chi. Leg. News, 389; Fed. Cas. 4328.)

**Conveyance by member of partnership.** See PARTNERS, sec. 5.

**Removal of goods.**—An allegation that defendant, in contemplation of bankruptcy, consigned goods to a consignee residing beyond the jurisdiction of the court, is a sufficient charge that the removal was to defraud creditors, if it was, in fact, done with the intent to keep the property from coming into the hands of the assignee. (In re Hammond v. Coolidge, 8 N. B. R. 71; 1 Lowell, 381; Fed. Cas. 5999.) An agreement between the parties to a suit against the bankrupt, to transfer certain claims to such action so as to shelter them under the lien of an attachment issued therein, is in fraud of the Bankrupt Act. (*Samson v. Burton*, 4 N. B. R. 1; Fed. Cas. 12285.)

**Net acts of bankruptcy.**—The Bankrupt Act does not forbid one, knowing himself to be insolvent, exchanging or selling his property or otherwise disposing of it at any time previous to the filing of the petition, provided such disposition leaves his estate in as good condition as formerly. (*Cook et al. v. Tullis*, 9 N. B. R. 433; 18 Wall. 332; *Clark, Ass., v. Iselin*, 11 N. B. R. 387; 21 Wall. 360.) Where a person whose property exceeds his debts conveys it to another who agrees to pay all the debts and support the grantor during the rest of his life, the conveyance is not *per se* fraudulent and void as to creditors. (In re Cornwell, 6 N. B. R. 305; 6 Amer. Law Rev. 365; Fed. Cas. 3250.)

**Sale of goods.**—Nor is the sale of goods by a merchant in embarrassed circumstances fraudulent when made to raise money to pay debts,

although less than cost price is received and the purchaser has knowledge of the merchant's insolvency. (*Sedgwick v. Lynch*, 8 N. B. R. 289; Fed. Cas. 12615.) The merchant may even continue to sell his stock at retail and endeavor to effect a compromise with his creditors, although insolvent, if there be no fraudulent intent (*In re Munger & Champlin*, 4 N. B. R. 90; Fed. Cas. 9923); or he may sell his property to raise money to defray expenses in contemplated bankruptcy proceedings, provided he does not sell at a sacrifice, and provided the sum raised is reasonable (*In re Keefer*, 4 N. B. R. 126; 8 Chi. Leg. News, 125; Fed. Cas. 7636); or he may sell if for the purpose of going into a new business enterprise, even though afterward he does not, in order to prevent the proceeds being seized on process issued out of a state court, put them into tangible shape. (*Fox v. Eckstein*, 4 N. B. R. 123; Fed. Cas. 5009.) Therefore, an adjudication will not be made on an involuntary petition that sets up the sale of the stock as the only act of bankruptcy, if there be no evidence to show that the vendor, who wishes to change his business, was insolvent at the time. (*In re Valliquette*, 4 N. B. R. 92; Fed. Cas. 16823.)

**Pledge of goods.**—It is not a fraud upon creditors for a debtor to receive collateral from his pledgee for collection. (*Clark, Ass., v. Iselin*, 11 N. B. R. 337; 21 Wall. 360.)

**Mortgages.**—A transfer is made in the usual and ordinary course of business, when a manufacturing company owning a mortgage sells it for its cash value and becomes bankrupt within six months thereafter. (*Judson v. Keltz*, 6 N. B. R. 165; 5 Ben. 348; Fed. Cas. 7567.) And for a present consideration a debtor may give a mortgage to enable him to carry on his business if there be no intent to delay creditors. (*In re Sanford*, 7 N. B. R. 352; Fed. Cas. 12310.)

**Conveyances in general.**—A conveyance, even though fraudulent, is not made "in contemplation of bankruptcy or insolvency," where there are no other creditors, and the debt is well secured. (*In re Johann*, 4 N. B. R. 143; Fed. Cas. 7331.) A sale by a person contemplating bankruptcy is not *prima facie* fraudulent unless surrounded by unusual circumstances, and is not then void as to purchasers in good faith. (*In re Hunt*, 2 N. B. R. 166; 1 Chi. Leg. News, 169; Fed. Cas. 6881.) Such a person may sell or encumber his estate for a present and sufficient consideration, if the transaction be *bona fide*. (*Gattman & Co. v. Honea, Ass.*, 12 N. B. R. 493; 7 Chi. Leg. News, 395; Fed. Cas. 5271.) A debtor may, without committing an act of bankruptcy, exchange goods covered by a warehouse receipt in a warehouse for others of less or equal value, within four months prior to bankruptcy. (*Sharp, Ass., etc. v. Philadelphia Warehouse Co.*, 19 N. B. R. 373.) There is no concealment where a debtor makes a *bona fide* conversion of his property, and shows good faith in respect to the care of the money received. (*Fox v. Eckstein*, 4 N. B. R. 123; Fed. Cas. 5009.) An unexecuted agreement by a railroad company to transfer certificates of stock is not an act of bankruptcy.

(*Winter v. Iowa, Minnetona & North Pacific Ry. Co.*, 7 N. B. R. 289; 2 Dill. 487; 6 West. Jur. 562; 5 Chi. Leg. News, 74; 6 Alb. Law J. 858; Fed. Cas. 17890.) A deed of assignment is not rendered void by the fact that the trustee was a clerk of the assignor, or that he had no property, but was of good character, and no bond was taken; or that the assignment authorized a sale on thirty days' credit; or that the debtor threatened bankruptcy unless a certain amount was accepted in satisfaction. (*In re Walker*, 18 N. B. R. 56; Fed. Cas. 17063.) An instrument which purports to transfer accounts, but which bears no revenue stamp, is void and does not constitute an act of bankruptcy. (*Welch v. Dunham*, 2 N. B. R. 9; 2 Ben. 488; 1 Am. Law T. Rep. Bankr. 89; Fed. Cas. 4143.)

**Conveyances of partnership property.**—A transfer of firm property from one member to another is not a fraud upon creditors, nor does it hinder or delay them or constitute a fraudulent preference. (*In re Munn*, 7 N. B. R. 468; 8 Biss. 442; 7 Amer. Law Rev. 751; Fed. Cas. 9925.) Nor does it constitute an act of bankruptcy to transfer the whole stock of a dissolved partnership to the one solvent partner to settle the affairs, even though a sale is made by such partner in gross. (*In re Weaver*, 9 N. B. R. 133; Fed. Cas. 17807.)

**Definition of insolvency.**—Within the provisions of the act of 1898, a person is deemed insolvent whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts. (Sec. 1—15.) As having some bearing by analogy, the following decisions under the act of 1867 are given: Although the assets of a debtor largely exceed his liabilities, yet he is insolvent if he is unable to meet his engagements as they accrue and become due. (*In re Woods*, 7 N. B. R. 126; 29 Leg. Int. 236; 20 Pittsb. Leg. J. 21; Fed. Cas. 17990.) Insolvency is inability to pay debts in the ordinary course of business, as men in trade usually do. (*In re Kingsbury et al.*, 3 N. B. R. 84; Fed. Cas. 7816; *Reson v. Knapp*, 4 N. B. R. 114; Fed. Cas. 11861; *Stranahan v. Gregory & Co.*, 4 N. B. R. 142; Fed. Cas. 13522; *Martin v. Toof et al.*, 4 N. B. R. 158; Fed. Cas. 9164; *Ecfort et al. v. Greely*, 7 N. B. R. 488; 4 Chi. Leg. News, 209; Fed. Cas. 4260; *Webb, Ass. v. Sachs et al.*, 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17325.) But a person should be held insolvent only when he fails to meet his debts according to the custom of the place of his business. (*Hall, Ass. etc. v. Wager et al.*, 5 N. B. R. 181; 3 Biss. 28; 5 West. Jur. 538; 3 Chi. Leg. News, 401; Fed. Cas. 5951.) He will be held to have knowledge of his insolvency when he cannot pay his debts in the ordinary course of business and knows that he cannot. (*Martin v. Toof et al.*, 4 N. B. R. 158; Fed. Cas. 9164.) If his property, when put up for sale on reasonable notice, will not bring enough cash to pay his debts, he is insolvent. (*In re Oregon Bulletin, etc. Co.*, 13 N. B. R. 508;

1 Cin. Law J. 87; Fed. Cas. 10559.) Likewise, he is insolvent if his debts cannot be met in full out of his property by levy and sale on execution. (In re Wells, 3 N. B. R. 95; 2 Chi. Leg. News, 49; Fed. Cas. 17388.) Likewise, he is insolvent if he transfers some of his assets in fraud of his creditors, but held property enough so that, if it were advantageously disposed of, it might pay all his debts, but he fails to pay a few small debts as they become due. (Ecfort & Petring v. Greely, 6 N. B. R. 433; 4 Chi. Leg. News, 209; Fed. Cas. 4260.)

**Insolvency of partnership.**—Upon a petition in bankruptcy by one late copartner for himself and against the other copartner, it is not enough to prove that the joint assets are insufficient to pay the joint liabilities. The firm and its members must be shown to be insolvent. (In re Bennett et al., 12 N. B. R. 181; 2 Lowell, 400.) If a firm is insolvent and there has been a joint act of bankruptcy, the creditors may proceed against both, but the solvent partner would have an opportunity to clear himself by paying all the debts; but he cannot safely pay them to his insolvent partner. (In re Bennett et al., 12 N. B. R. 181; 2 Lowell, 400.)

**Preferences constituting acts of bankruptcy.** See PREFERENCES, sec. 60, *ante*. A creditor holding the commercial paper of his debtor, in respect to which the debtor has committed an act of bankruptcy, must be held to know that the debtor is insolvent and has committed an act of bankruptcy, when he proceeds to take measures to secure a preference over other creditors (Warren v. Bank, 7 N. B. R. 481; 10 Blatchf. 483; Fed. Cas. 17202); and a transfer of property which necessarily gives a preference to one creditor over another is presumed to have been made with a view to such preference. (Catlin v. Hoffman, 9 N. B. R. 342; 2 Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521.)

Creditors who have obtained a preference by a bill of sale from the debtor are estopped to set up the execution of the same or the non-payment of a note as an act of bankruptcy. (In re Elias G. Williams, 14 N. B. R. 132; Fed. Cas. 17706.)

A notice to a creditor of an act of bankruptcy does not affect a transfer to him, otherwise than as a chance to show that he had reason to believe that such transfer was fraudulent. (Catlin v. Hoffman, 9 N. B. R. 342; 2 Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521.) And a creditor is charged with knowledge of the insolvency of the assignor when a forced assignment of all property is made to the creditor. (Grow, Ass. v. Ballard et al., 2 N. B. R. 69; 1 Amer. Law T. Rep. Bankr. 111; Fed. Cas. 5848.)

**Preferences not constituting acts of bankruptcy.**—A person is not prohibited from loaning money at legal rates to one whom he has reason to believe insolvent, and taking security, provided the transaction be *bona fide*. (Darley v. Boatman's Sav. Inst., 4 N. B. R. 195; 3 Chi. Leg. News, 249; 4 Amer. Law T. 117; 1 Leg. Op. 146; 1 Amer. Law T. Rep. Bankr. 251; Fed. Cas. 3571.)

Where the policies in an insurance company are terminated, the insured do not become creditors of the company for the unearned premium, and hence payment to them of such premiums does not constitute such a preference as will support a petition for an adjudication in bankruptcy. (*Knickerbocker Ins. Co. v. Comstock*, 9 N. B. R. 484; 6 *Chi. Leg. News*, 142; *Fed. Cas.* 1879.)

An allegation in an involuntary petition that the debtor, "being insolvent or in contemplation of insolvency, made a conveyance with intent to give a preference," is insufficient, being alternative. (*In re Hanibel et al.*, 15 N. B. R. 233; 9 *Chi. Leg. News*, 165; 15 *Alb. Law J.* 271; 24 *Pittsb. Leg. J.* 152; *Fed. Cas.* 6028.)

**Legal proceedings constituting preferences.**—When the act of bankruptcy is a passive one, such as suffering property to be taken on legal process, when the debtor is insolvent, with intent to give a preference, if the natural and probable consequence of the act is to give a preference, it will be inferred that the debtor had such intent, and the burden of proof will be upon him to show the contrary. (*In re Black et al.*, 1 N. B. R. 81; 2 *Ben.* 196; 1 *Amer. Law T. Rep. Bankr.* 89; *Fed. Cas.* 1457. *For contra*, *In re King*, 10 N. B. R. 108; *Fed. Cas.* 7783.)

If an insolvent debtor does not apply to the bankrupt court, and his property is taken by legal process by some of his creditors, he will be held to have suffered his property to be so taken with intent to prefer such creditors. (*In re Wells*, 3 N. B. R. 95; 2 *Chi. Leg. News*, 49; *Fed. Cas.* 17388; *Warren v. Tenth Nat. Bank et al.*, 7 N. B. R. 481; 10 *Blatchf.* 498; *Fed. Cas.* 17202; *Wilson, Ass., v. City Bank of St. Paul*, 5 N. B. R. 270.) He also commits an act of bankruptcy by confessing judgment and allowing his property to be taken on an execution with intent to give a preference. His insolvency or contemplation thereof must be averred and shown. (*In re Craft*, 1 N. B. R. 89; 2 *Ben.* 214; *Fed. Cas.* 3316; *Vogel v. Lathrop*, 4 N. B. R. 146; 18 *Pittsb. Leg. J.* 106; *Fed. Cas.* 16965; 3 *Pitta. Rep.* 268; *Traders' Nat. Bank v. Campbell*, 6 N. B. R. 358; 14 *Wall.* 87; *Webb, Ass., v. Sachs et al.*, 15 N. B. R. 168; 4 *Sawy.* 158; 9 *Chi. Leg. News*, 156; *Fed. Cas.* 17325.)

A warrant of attorney to confess judgment, given by a debtor knowing himself to be insolvent, whereby the property is levied on by virtue of an execution with intent to give a preference, constitutes an act of bankruptcy. (*In re Dibble*, 2 N. B. R. 185; 8 *Ben.* 208; 1 *Chi. Leg. News*, 355; *Fed. Cas.* 3884; *Haughey, Ass., v. Albin*, 2 N. B. R. 129; 2 *Bond*, 244; 2 *Amer. Law T. Rep. Bankr.* 47; *Fed. Cas.* 6222.) But in deciding this, the character, etc., of the alleged bankrupt's business may be taken into consideration (*In re Leeds*, 1 N. B. R. 188; 25 *Leg. Int.* 146; 1 *Amer. Law T. Rep. Bankr.* 78; 7 *Amer. Law Reg. (N. S.)* 698; 6 *Phila.* 468; 15 *Pittsb. Leg. J.* 361; *Fed. Cas.* 8205); and the circumstances connected with the proceedings may be considered by a jury in determining the truth of an allegation that the debtor has procured or suffered his property to be

taken in execution. (In re Woods, 7 N. B. R. 126; 29 Leg. Int. 236; 20 Pittsb. Leg. J. 21; Fed. Cas. 17990.) The entry of a judgment upon warrant of attorney constitutes an act of bankruptcy where the creditors have reasonable cause to believe the debtor insolvent, even though at the time of the execution of the bond there was no reason to so believe. (In re Lord, 5 N. B. R. 318; Fed. Cas. 8503.) Where a debtor has committed no act of bankruptcy and will not voluntarily petition, a creditor may sue him so as to force him to commit an act of bankruptcy, and then himself proceed against him for such act in involuntary bankruptcy. (Warren v. Tenth Nat. Bank et al., 7 N. B. R. 481; 10 Blatchf. 493; Fed. Cas. 17202; Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310.)

**Legal proceedings not constituting preferences.**—Where an actual intent to give a preference is negatived, mere honest inaction on the part of an insolvent debtor, sued on a just debt, and who allows judgment to go against him and his property to be levied on, is not an act of bankruptcy. (Wright v. Filley, 4 N. B. R. 197; 5 West. Jur. 212; Fed. Cas. 18077.) And therefore, where there is a passive non-resistance on the part of a debtor in a suit against him, he is under no obligation to file a petition in bankruptcy to prevent judgment and levy, and his failure to do so is not sufficient evidence of an intent to give a preference. (Wilson v. City Bank of St. Paul, 9 N. B. R. 97; 17 Wall. 473. But for *contra*, see Vogel v. Lathrop, 4 N. B. R. 146; 3 Pittsb. Rep. 268; 18 Pittsb. Leg. J. 106; Fed. Cas. 16985.) It is not an act of bankruptcy if a debtor suffer a sale to take place from inability to resist, even if the result be a preference of one creditor over another. (Rankin et al. v. Florida, etc. R. R. Co., 1 N. B. R. 193; 1 Amer. Law T. Rep. Bankr. 85; Fed. Cas. 11567.) Nor is a judgment obtained by creditors against an insolvent debtor for the want of affidavits of defense necessarily an act of bankruptcy. (Louchheim Brothers v. Henzey, 18 N. B. R. 173.) Nor is his mere non-resistance to judicial proceedings against him when the debt is due and there is no valid defense. (Tenth Nat. Bank of New York City et al. v. Warren et al., Assignees, 17 N. B. R. 75; 96 U. S. 539.) Nor is the giving of a confession of judgment as security for a loan of money then made. (Clark v. Iselin et al., 9 N. B. R. 19; 10 Blatchf. 204; 21 Pittsb. Leg. J. 82; Fed. Cas. 2825; In re Leeds, 1 N. B. R. 138; 25 Leg. Int. 140; 1 Amer. Law T. Rep. Bankr. 78; 7 Amer. Law Reg. (N. S.) 693; 6 Phila. 468; 15 Pittsb. Leg. J. 361; Fed. Cas. 8205.) Nor is a warrant for judgment delivered to a bankrupt one month before the petition was filed, invalid, if it did not appear that the bank had reasonable cause at the time to believe the debtor insolvent or knowledge that the act was in fraud of the bankrupt law. (Shimer, Ass. v. Huber et al., 19 N. B. R. 414; 14 Phila. 402; 36 Leg. Int. 339; 8 Reporter, 333; Fed. Cas. 12787.)

**General assignments constituting acts of bankruptcy.**—Upon its face a voluntary assignment bears conclusive evidence that the assign-



or's intention is to prevent the property transferred being distributed under the Bankrupt Act. (In re Kasson, 18 N. B. R. 379; Fed. Cas. 7617.)

Assignments under state insolvent laws are void (Rowe v. Page, 13 N. B. R. 366; In re Langley, 1 N. B. R. 155; In re Mendelsohn, 12 N. B. R. 533; 3 Sawy. 343; Fed. Cas. 9420; Globe Insurance Co. v. Cleveland Insurance Co., 14 N. B. R. 311; 8 Chi. Leg. News, 258; 4 Amer. Law Rec. 652; 18 Alb. Law J. 305; Fed. Cas. 5486; McDonald, Ass., v. Moore et al., 15 N. B. R. 26; 8 Ben. 579; 23 Int. Rev. Rec. 25; 3 N. Y. Wkly. Dig. 461; 24 Pittsb. Leg. J. 83; Fed. Cas. 8768; Platt v. Preston et al., 19 N. B. R. 241; Fed. Cas. 11219, 5046; Pool v. McDonald et al., 15 N. B. R. 560; 9 Chi. Leg. News, 323; Fed. Cas. 11268; Cragin, Ass., v. Thompson, 12 N. B. R. 81; 2 Dill. 513; Fed. Cas. 3320); and the assignor's intent to defeat the provisions of the Bankrupt Act will be conclusively presumed. (In re Smith, 3 N. B. R. 98; 4 Ben. 1; 3 Amer. Law T. 7; 1 Amer. Law T. Rep. Bankr. 147; Fed. Cas. 12974.) The fact that the creditors have offered to assent to such assignment upon condition that the assignee be changed will not estop them from proceeding in bankruptcy. (In re Spicer & Peckham v. Ward & Trow, 3 N. B. R. 127; Fed. Cas. 13241.) The making of a voluntary general assignment by a debtor is an act of bankruptcy of itself. (In re Croft Brothers, 17 N. B. R. 324; 6 N. Y. Wkly. Dig. 218; 3 Biss. 188; 10 Chi. Leg. News, 204; 6 Amer. Law Rep. 597; Fed. Cas. 3404.) A power of revocation, inserted in an assignment made for the benefit of creditors, would render such assignment constructively fraudulent, and therefore void. (Jones, Ass., v. Clifton, 18 N. B. R. 125; 17 Amer. Law Reg. (N. S.) 713; 6 Reporter, 324; 7 Cent. Law J. 522; Fed. Cas. 7453.) But the fact that the execution of a voluntary assignment was defective does not prevent its being an act of bankruptcy. (In re Lawrence et al., 18 N. B. R. 516; 26 Pittsb. Leg. J. 143; Fed. Cas. 8183.)

The trustee and all persons claiming the benefit of a general assignment are chargeable with knowledge of the terms thereof, and with knowledge of the insolvency of the debtor and a purpose on his part to evade the law. (Jackson, Ass., v. McCulloch et al., 13 N. B. R. 233; 1 Woods, 433; 1 N. Y. Wkly. Dig. 534; Fed. Cas. 7140.)

If the assignment occur pending proceedings to have a debtor declared a bankrupt, it is fraudulent, and the assignee will be enjoined from making any transfer of the property. (In re Sholl, 16 N. B. R. 175; 1 Month. Jur. 350; 1 N. Y. Rep. (O. S.) 108; 9 Chi. Leg. News, 377; 6 Amer. Law Rec. 15; 1 Tex. Law J. 42; 4 Law & Eq. Rep. 196; 24 Pittsb. Leg. J. 207; Fed. Cas. 12926.)

A general assignment for the benefit of creditors, without preference and in good faith, made sixteen days prior to commencement of proceedings in bankruptcy, and pending adverse proceedings by a creditor, is not a bar to a bankrupt's discharge. (In re Pierce & Holbrook, 3 N. B. R. 61; 26 Leg. Int. 332; 16 Pittsb. Leg. J. 204; Fed. Cas. 11141. But

for *contra*, In re Kasson, 18 N. B. R. 379; Fed. Cas. 7617.) To prevent a discharge, the assignment must have been made not only in contemplation of bankruptcy, but it must have been made with intent to prefer some creditor, or to prevent the property from coming into the hands of his assignee in bankruptcy, or from being distributed in satisfaction of his debts. (In re Croft Brothers, 17 N. B. R. 324; 6 N. Y. Wkly. Dig. 218; 8 Biss. 188; 10 Chi. Leg. News, 204; 6 Amer. Law Rep. 597; Fed. Cas. 3404.) Therefore, an assignment for the benefit of creditors without preference, but with intent to prevent the equal distribution of the assignor's property, will prevent a discharge. (In re Goldschmidt, 3 N. B. R. 41; 3 Ben. 379; Fed. Cas. 5520.)

**General assignments not constituting acts of bankruptcy.**—A general assignment for the benefit of creditors, under the provisions of a state law, and during the existence of the United States Bankrupt Act, may be held valid, provided the rights of creditors are not prejudiced. (In re Hawkins et al., 2 N. B. R. 122.) Likewise, an assignment of property for the benefit of all creditors, made in good faith and free from taint of fraud, is not an act of bankruptcy. (Farrin v. Crawford, 2 N. B. R. 181; 7 Chi. Leg. News, 342; Fed. Cas. 4686; Sedgwick, Ass., v. Place et al., 1 N. B. R. 204; Fed. Cas. 12622.) Nor is it if made to secure equal distribution among all the creditors, unless there be an intent to hinder, delay or defraud them. (Langley v. Perry, 2 N. B. R. 180; 8 Amer. Law Reg. (U. S.) 427; 16 Pittsb. Leg. J. 117; 2 Balt. Law Trans. 521; 2 Amer. Law T. Rep. Bankr. 84; Fed. Cas. 8067; In re Marter, 12 N. B. R. 185; Fed. Cas. 9143. But see In re Kimball et al., 16 N. B. R. 188; Fed. Cas. 7770.)

Creditors who are beneficiaries under a general assignment by a debtor of all of his property for the benefit of all of his creditors without preference, and who have assented in writing to a substitution of assignees thereunder, are estopped from opposing the discharge of the debtor in bankruptcy on the ground that such assignment was fraudulent. (In re Schuyler, 2 N. B. R. 169; 3 Ben. 200; 16 Pittsb. Leg. J. 94; 2 Amer. Law T. Rep. Bankr. 85; Fed. Cas. 12494.)

The fifth defined act of bankruptcy by a person consists of his having "admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground." There was no corresponding provision under the act of 1867.

**Acts of bankruptcy in general.**—In order to authorize the making of an order to show cause, the deposition of acts of bankruptcy must be such as constitutes legal testimony. (In re Rosenfields, 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 583; Fed. Cas. 12061.)

If one of two persons jointly and severally liable for a debt, who are not partners, does an act which would subject him to a decree of bankruptcy, such act does not affect his associate. (James, Adm'r, v. Atlantic Delaine Co. et al., 11 N. B. R. 390; Fed. Cas. 7179.)

Each distinct charge may be denied in a general manner where several distinct allegations of bankruptcy are set forth in the petition, if he does not file his answer of denial in the nature of a special plea to each allegation (In re Hawkeye Smelting Co., 8 N. B. R. 885); and as many defenses as there are may be set up to the petition, but each defense must be pleaded separately. (In re Quimette, 8 N. B. R. 140; 1 Sawy. 47; Fed. Cas. 10622.)

The burden of refuting the allegations contained in the petition is on the respondent (In re Price & Miller, 8 N. B. R. 514; Fed. Cas. 11411); and the petitioner is not obliged to make full proof of the insolvency, but he may offer proof tending to show the debtor's insolvency, and the latter must explain the evidence, as he is best acquainted with the condition of his own affairs. (In re Oregon Bulletin Printing and Publishing Co., 18 N. B. R. 508; 1 Cin. Law Bul. 87; Fed. Cas. 10559.) Likewise, the burden is upon the debtor to disprove the allegations of the petition where there is a simple denial, and if no evidence is introduced the petitioning creditor is entitled to an adjudication in bankruptcy (In re Jelsh and Dunnebacke, 9 N. B. R. 412; Fed. Cas. 7257); and the omission to file the proof of an act of bankruptcy is a substantial defect which cannot be remedied. (In re Brown, 15 N. B. R. 416; 9 Chi. Leg. News, 191; Fed. Cas. 1961.)

b. A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

[Act of 1867. Sec. 39. . . . he . . . shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed.]

Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, to \$500 or over, or if all the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount, may file a petition to have him adjudged a bankrupt (59, b). Petitions must be filed in duplicate; one copy for the clerk and one for service upon the bankrupt (59, c), and to be accompanied by a list of the creditors (59, d). Upon the filing of a petition a writ of subpoena shall be served upon the person therein named as defendant in the same manner as service of such process is now had in suits in equity, except that it is returnable in fifteen days (18, a). This section removes all incentive to the dishonest debtor to secretly commit acts of bankruptcy and then have the time within which proceedings might be instituted elapse before the creditors may obtain knowledge thereof, and extends the time for instituting proceedings four months from the date the diligent creditor obtains knowledge of the offense.

Where the debtor, in answer to a petition, alleges part payment, the petition cannot be maintained, if such part payment reduce the debt below the amount required by the bankrupt act (*In re Quimette*, 3 N. B. R. 140; 1 Sawy. 47; Fed. Cas. 10622) and, therefore, payments made by a debtor to petitioning creditors are material facts on the issue in denial of bankruptcy, and the debtor may introduce evidence thereof without special traverse of the amount of the indebtedness. (*In re Skelley*, 5 N. B. R. 214; 3 Biss. 260; Fed. Cas. 12921.)

A motion by creditors, not joining in the petition, to contest the adjudication, will be denied if they do not make a case of fraud or collusion to procure an adjudication to which the petitioning creditors are not, in fact, entitled. (*In re Lawrence et al.*, 18 N. B. R. 516; 26 Pittsb. Leg. J. 143; Fed. Cas. 8133.)

In the case of one adjudged a bankrupt on his own petition, the adjudication cannot be assailed by proof that he was not, in fact, insolvent. (*In re Atlantic Mutual Life Insurance Co.*, 16 N. B. R. 541; 9 Ben. 270; 16 Alb. Law J. 453; 24 Int. Rev. Rec. 13; Fed. Cas. 628.) Nor can the question of solvency be examined on the motion to set aside an adjudication of bankruptcy against a corporation procured by petition of a trustee. (*In re Atlantic Mutual Life Insurance Co.*, 16 N. B. R. 541; 9 Ben. 270; 16 Alb. Law J. 453; 24 Int. Rev. Rec. 13; Fed. Cas. 628.)

c. It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be

dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

[Act of 1867. SEC. 41. . . . and if upon such hearing or trial, the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens were the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover costs.]

The bankrupt or any creditor may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow. Under this provision the creditor may appear and assist in the defense of the case, if he so desires. (Secs. 18, *b*, 59, *f*.)

**Defense of solvency.**—An answer to a petition is sufficient, which contains a general denial, and states that the respondent has not committed the acts of bankruptcy set forth, and avers that he should not be declared bankrupt for any cause alleged. (In re Hawkeye Smelting Co., 8 N. B. R. 385.)

*d*. Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

The bankrupt or any creditor may appear and plead to the petition within ten days after the return day or within such further time as the court may allow (sec. 18, *b*), and if they appear and controvert the facts alleged in the petition, the judge must determine the issues presented by the pleadings and make the adjudication or dismiss the petition. (Sec. 18, *d*.) A person against whom an involuntary petition has been filed is entitled to have a trial by jury in respect to the question of his insolvency, upon the filing of a written application therefor, at or before the time in which an answer may be filed. (Sec. 19, *a*.)

*a*. Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an appli-

cation is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

During the pendency of proceedings and until adjudication of bankruptcy, the defendant retains control and title to the property (sec. 70), unless the petitioner file with his petition an application to take charge of and hold the property pending the adjudication, in which event he must accompany it by a bond; or if upon satisfactory proof it is shown that the bankrupt, against whom an involuntary petition has been filed and is pending, has committed an act of bankruptcy, or is neglecting or permitting his property to deteriorate in value, the judge may issue a warrant under which the marshal may seize and hold such property subject to further orders. Before such warrant is issued, however, the petitioner applying therefor must enter into a bond conditioned to indemnify the bankrupt for any damages that may result by reason of such seizure if wrongfully obtained. (Sec. 69, and note under sec. 50, *g*.) Courts are to appoint receivers or the marshals, upon application of parties in interest, where they find it absolutely necessary for the preservation of estates, to take charge of the property of bankrupts after filing of petition, and until it is dismissed or the trustee has qualified. (Sec. 2—3.)

**Costs pertaining to the determination of bankruptcy.**—Where, in involuntary bankruptcy, there has been litigation of the question whether acts of bankruptcy had been committed, his fee should be allowed the debtor's counsel out of the assets of the bankrupt estate (*In re Portsmouth Savings Fund Society*, 11 N. B. R. 303; 2 *Hughes*, 239; *Fed. Cas.* 11298); and the petitioning creditor is entitled to "the same costs that are allowed by law to a party recovering a suit in equity." (*In re Sheehan*, 8 N. B. R. 353; *Fed. Cas.* 12738.)

**Custody of the property of the bankrupt.**—A marshal has no authority under a warrant, issued in response to a petition asking that the property of the debtor be seized provisionally, to seize property outside of his district. (*Carr v. Phillips*, 18 N. B. R. 527; sec. 5016, R. S.) If the

marshal, in executing a warrant for the seizure of a bankrupt's property, seize that of a stranger, he renders himself liable to an action for trespass, which may be brought in a state court. (Marsh and Palmer, Executors, v. Armstrong, U. S. Marshal, 11 N. B. R. 125.) A receiver may be appointed after an adjudication of bankruptcy and before the selection of an assignee, for the temporary care and custody of the estate, when special circumstances render it desirable. (Lansing v. Mantou, 14 N. B. R. 127; 8 N. Y. Wkly. Dig. 112; Fed. Cas. 8077.)

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

[Act of 1867. SEC. 41. . . . If, upon such hearing or trial, the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens were the sole ground of the proceedings, the proceedings shall be dismissed and the respondent shall recover costs.

Courts of bankruptcy are authorized to tax costs, whenever they are allowed by law, and render judgment therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates. (Sec. 2—18.)

**Sec. 4. Who may become bankrupts.—a.** Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

[Act of 1867. SEC. 11. *And be it further enacted*, That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next immediately preceding the time of the filing of such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all

his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors and his desire to obtain the benefit of this act, and shall annex to his petition a schedule . . . [here follows contents of schedule] the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt: *Provided*, That all citizens of the United States petitioning to be declared bankrupt shall on filing such petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the district court, or, if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies. [Here follows requirement as to notice.]

SEC. 37. *And be it further enacted*, That the provisions of this act shall apply to all moneyed business or commercial corporations and joint-stock companies, and that upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators at any legal meeting called for the purpose, or upon the petition of any creditor or creditors of such corporation or company, made and presented in the manner hereinafter provided in respect to debtors, the like proceedings shall be had and taken as are hereinafter provided in the case of debtors. . . . No allowance or discharge shall be granted to any corporation or joint-stock company, or to any person or officer or member thereof: *Provided*, That whenever any corporation by proceedings under this act shall be declared bankrupt, all its property and assets shall be distributed to the creditors of such corporations in the manner provided in this act in respect to natural persons.]

The word "bankrupt" includes a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt. (Sec. 1—4.)

The distinction between voluntary and involuntary bankruptcy is determined by the person filing the petition; if by the debtor, it is voluntary, and if by the creditor, involuntary. While wage-earners and tillers of the soil may partake of the benefits of this act by becoming voluntary bankrupts, they cannot be declared so by the institution of involuntary



proceedings at the instance of the creditors. When once an adjudication has been had all distinction ceases, and the rights and responsibilities of all bankrupts and their creditors are identical. A voluntary bankrupt, unable to pay the necessary filing fees, may be relieved therefrom upon filing an affidavit with his petition in which he shall state that he "is without, and cannot obtain, the money with which to pay such fees." (Sec. 51—2.)

Pursuant to this section any person except a corporation may become a voluntary bankrupt, provided he owes a debt,—the term "debt" including any debt, demand or claim provable in bankruptcy. (Sec. 1—11.) The fact that it is a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date, or with rebate of interest upon such as were not then payable and did not bear interest, may nevertheless be proved and allowed. (Sec. 63a.) Provision for filing the petition is made in section 59, a.

b. Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading, printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

[Act of 1867. Sec. 39. . . . Any person, . . . or who being a banker, merchant or trader, has fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed.]

**Married women.**—A married woman cannot be adjudicated a bankrupt where by the law of her domicile she is incapable of making a con-

tract (In re Goodman, 8 N. B. R. 380; Fed. Cas. 5540); and she may avail herself of her coverture to defeat debts in bankruptcy. (In re Slichter et al., 2 N. B. R. 107.) A petition founded upon a debt evidenced by notes which do not show on their face an intention to bind her separate estate must allege that the notes were given for the benefit of her separate estate or else were given by her in the course of business if she be a trader. (In re Howland, 2 N. B. R. 114; 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53; Fed. Cas. 6791; In re Collins, 10 N. B. R. 325; 3 Biss. 415.) A partnership between a man and his wife may be adjudged bankrupt. (In re Kinkead, 7 N. B. R. 439; 3 Biss. 405; 7 West. Jur. 110; 6 Amer. Law T. Rep. 45; 5 Chi. Leg. News, 217; 1 Amer. Law Rec. 533; 3 Bench & Bar (U. S.) 41; Fed. Cas. 7824.)

**Infants.**—Proceedings with reference to the bankruptcy of a person while an infant are void, and a petition of voluntary bankruptcy filed by him on becoming of age, in which he confirmed and ratified the former proceedings and asked the benefit of the Bankrupt Act, is not such a confirmation as will operate as an affirmation of the debt on which they were based. (In re Derby, 8 N. B. R. 106; 6 Ben. 232; 6 Alb. Law J. 422; Fed. Cas. 3815.)

**Lunatics.**—A person who is under guardianship as a lunatic may be proceeded against in involuntary bankruptcy in opposition to the wishes of his guardian (In re Weitzel, 14 N. B. R. 466; 7 Biss. 289; 3 Cent. Law J. 557; Fed. Cas. 17365); but if such person were insane at the time of the commission of an alleged act of bankruptcy, he cannot be adjudged a bankrupt therefor. (Id.; In re Pratt, 6 N. B. R. 276; Fed. Cas. 11371. See In re Murphy, 10 N. B. R. 48; Fed. Cas. 9946.)

**Indorsers.**—An indorser's liability on a note constitutes a debt which may be made the foundation of either voluntary or involuntary proceedings in bankruptcy. (In re Nickodemus, 3 N. B. R. 55; 2 Chi. Leg. News, 49; 16 Pittsb. Leg. J. 233; 2 Amer. Law T. 168; 1 Amer. Law T. Rep. Bankr. 140; Fed. Cas. 10254.) But it has been held that a mere accommodation indorser cannot be adjudged bankrupt for non-payment of such paper. (In re Clemens, 9 N. B. R. 57; 2 Dill. 533; 21 Pittsb. Leg. J. 30; Fed. Cas. 2877.)

**Executors.**—Executors appointed by will for the limited purpose of adjusting testator's banking business do not come within the class of executorships designed to be administered under the Bankrupt Act. (Graves et al. v. Winter et al., 9 N. B. R. 357; 6 Chi. Leg. News, 284; 1 Cent. L. J. 178; 21 Pittsb. Leg. J. 159; Fed. Cas. 5710.)

**Banks.**—National banks and banks incorporated under state or territorial laws cannot be adjudged involuntary bankrupts under this act; but the liquidation of such banks when insolvent is expressly provided for by United States, state and territorial laws.

The laws of the United States provide that when any national banking association shall be dissolved, and its rights, privileges and franchises declared forfeited, as prescribed in section 5239 of the Revised

Statutes of the United States, or when any creditor of any national banking association shall have obtained a judgment against it in any court of record, on proper showing, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may, after due examination of the affairs, in either case, appoint a receiver, who shall proceed to close up such association and enforce the personal liability of the stockholders, as provided for in section 5234, Revised Statutes of the United States. (See Act of June 30, 1876, 1 Supp. R. S. 107, ch. 156, as amended by Act of August 3, 1892, 2 Supp. R. S. 68, ch. 860, and by Act of March 2, 1897, 2 id. 565, ch. 354.)

Each state and territory wherein state and territorial banks have been organized have prescribed special provisions of law applicable to said institutions when they become insolvent, and providing for the liquidation of the affairs of such banks.

On a petition to have a national bank adjudged bankrupt for suspension of payments and preferential payments, it was held that the court had no jurisdiction in view of the act. (*Smith v. Manufacturers' Nat. Bank*, 9 N. B. R. 122; Fed. Cas. 18076.) Private bankers may be adjudged involuntary bankrupts. A bank whose stock is owned by private persons is a private corporation, though its object be of a public nature and the government share with the corporators in the stock. (*Sweatt v. Boston*, etc. R. R., 5 N. B. R. 234; 8 Cliff. 339; 1 Amer. Law T. Rep. Bankr. 278; 4 Amer. Law T. 174; 6 Amer. Law Rev. 168; Fed. Cas. 18694.)

An incorporated society which had been doing general banking business ceased business in 1862 because of the war, and resumed in 1865 for the purpose of liquidation only, being much hindered by stay laws, and was adjudicated bankrupt in 1872. The court held that the society was not to be regarded as a bank or trader as against persons with whom settlements were made within four months of bankruptcy, etc. (*Harmanson, Ass., v. Bain et al.*, 15 N. B. R. 173; 1 Hughes, 188; Fed. Cas. 6072.)

**Wage-earner.**—This term is defined to mean an individual who works for wages, salary or hire at a rate of compensation not exceeding \$1,500 per year. (Sec. 1—26.)

**Aliens.**—Courts of bankruptcy are authorized to adjudge persons bankrupt who have had their principal place of business, resided or had their domicile within their respective territorial jurisdiction for the preceding six months or the greater portion thereof, or who do not have their principal place of business, reside or have their domicile within the United States, but have property within their jurisdiction, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions. (Sec. 2—1.)

An alien, resident within the United States, under a somewhat parallel passage of 1867 was held entitled to the benefits of the bankrupt law, and a residence for six months in the district in which application

was made was not required. (In re Goodfellow, 8 N. B. R. 114; 1 Lowell, 510; 8 Amer. Law T. Rep. Bankr. 69; 1 Amer. Law T. Rep. Bankr. 179; Fed. Cas. 5536.)

**Tradesmen or merchants.**—The following have been held to be tradesmen: A saloon-keeper who buys liquors and cigars in quantities and sells them at retail for cash and on credit is a merchant or tradesman (In re Sherwood, 17 N. B. R. 112; 9 Ben. 66; Fed. Cas. 12773); a stair-builder who buys lumber and other materials and fashions it into stairs (In re Garrison, 7 N. B. R. 287; 5 Ben. 430; Fed. Cas. 5254); a miller who purchases grain, grinds it into flour and feed, and retails the manufactured articles from a store (In re Anketell, 19 N. B. R. 268; Fed. Cas. 394).

Following were held not to be tradesmen: A firm owning and operating a farm, the members of which owned stock in and are officers of a solvent manufacturing corporation (In re Stickney, 17 N. B. R. 305; Fed. Cas. 13439); a farmer and dealer in live-stock (In re Rugsdale, 16 N. B. R. 215; 25 Pittsb. Leg. J. 64; Fed. Cas. 12123); a person who owns oil lands which he divides into leaseholds and receives rent in oil, however extensive his transactions and credits (In re Woods, 7 N. B. R. 126; 29 Leg. Int. 236; 20 Pittsb. Leg. J. 21; Fed. Cas. 17990); a person who sold a carriage, a slave, two pairs of horses, a piano, a lot of cigars and some harness, for which he had contracted debts, it not being shown that he had bought the goods for the purpose of selling them again (In re Rogers, 3 N. B. R. 139; 1 Lowell, 423; Fed. Cas. 12001); an incorporated society which had been a bank doing a general banking business, which had ceased during the war and resumed business in 1865 for the purpose of liquidation only, was held not to be regarded as a bank or trader (Harmanson, Ass., v. Bain et al., 15 N. B. R. 173; 1 Hughes, 138; Fed. Cas. 6072); a debtor who carried on business on a cash basis, and a considerable time prior to filing his petition had given up the business, leaving nothing outstanding either as assets or debts (In re Keach, 3 N. B. R. 3; 1 Lowell, 335; 2 Amer. Law T. 123; 1 Amer. Law T. Rep. Bankr. 167; Fed. Cas. 7629); a stock and gold broker, who was not a member of the stock exchange, but conducted his business through other brokers who were members, but who kept no books of account (In re Moss, 19 N. B. R. 132; Fed. Cas. 9877); a common carrier (In re Union Pacific R. R. Co., 10 N. B. R. 173; 6 Chi. Leg. News, 355; 8 Amer. Law Rev. 779; 31 Leg. Int. 261; Fed. Cas. 14376).

**Manufacturers.**—The publishers of a daily paper and proprietors of a book and job printing office are held not to be manufacturers within the meaning of the Bankrupt Act. (In re Kenyon & Fenton, 6 N. B. R. 238; In re The Capital Pub. Co., 18 N. B. R. 319.) A person who prepares for market and sells lumber which is the growth of his own land is a manufacturer (In re Chandler, 4 N. B. R. 66; 1 Lowell, 478; Fed. Cas. 2591); and so is a person who makes it his business to engage in the manufacture and sale of lumber. (In re Cowles, 1 N. B. R. 42; 1 West. Jur. 367; Fed. Cas. 3297.)

**Corporations.**—This word is defined to mean all bodies having any of the powers and privileges of private corporations, not possessed by individuals or partnerships, and includes limited or other partnership associations, organized under laws making the capital subscribed alone responsible for the debts of the association. (Sec. 1—6.)

Under the act of 1867 an insurance company was held to be within the scope and provisions of the general bankruptcy law (*In re Merchants' Ins. Co.*, 6 N. B. R. 48; 3 Biss. 162; 20 Pittsb. Leg. J. 82; 4 Chi. Leg. News, 73; Fed. Cas. 9441); and incorporated steamship and steamboat companies and canal corporations, not of a public character, are commercial corporations. (*Sweatt v. Boston, Hartford & Erie R. R. Co.*, 5 N. B. R. 284; 3 Cliff. 839; 1 Amer. Law T. Rep. Bankr. 273; 4 Amer. Law T. 173; 6 Amer. Law Rev. 168; Fed. Cas. 18684.) Railroads are comprehended within the words "moneyed, business or commercial corporations," contained in the bankrupt law. (*In re Cal. Pac. R. R. Co.*, 11 N. B. R. 198; 3 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2315; *Winter v. I. M. & N. Ry. Co.*, 7 N. B. R. 289; 2 Dill. 487; 6 West. Jur. 562; 5 Chi. Leg. News, 74; 6 Alb. Law J. 358; Fed. Cas. 17890; *In re Southern Minnesota Ry. Co.*, 10 N. B. R. 86; Fed. Cas. 13138; *In re Opelousa & Great Western R. R. Co.*, *Ex parte Tucker et al.*, 3 N. B. R. 81; Fed. Cas. 10547.) Under the act of 1867 it was held that the courts of bankruptcy have no jurisdiction over a railroad company chartered and operated in another state, by reason of there being offices in the former state. "Carrying on business," referred to in that act in reference to a railroad company, means where the road is, or is to be constructed, maintained and operated. (*In re Alabama & Chattanooga R. R. Co.*, 6 N. B. R. 107; 5 Blatchf. 890; 5 Amer. Law Rev. 577; Fed. Cas. 124.) The word "business," as applied to corporations, has a broader meaning than the word "commercial," but it was not the intention of congress to give such a scope to the word "business" as to supersede the words "moneyed" and "commercial," and leave them without any practical signification. (*Sweatt v. Boston, Hartford & Erie R. R. Co.*, 5 N. B. R. 284; 3 Cliff. 839; 1 Amer. Law T. Rep. Bankr. 273; 4 Amer. Law T. 174; 6 Amer. Law Rev. 168; Fed. Cas. 18684.)

A business corporation, as contemplated by the act, is one created for the purpose of carrying on any lawful business defined by its charter, and clothed with power to do so. (*Rankin et al. v. Florida, etc. R. R. Co.*, 1 N. B. R. 196; 1 Amer. Law T. Rep. Bankr. 85; Fed. Cas. 11567; *Alabama & Chattanooga R. R. Co. v. Jones*, 5 N. B. R. 97; Fed. Cas. 126.)

**Sec. 5. Partners.**—*a.* A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

[Act of 1867. SEC. 36. *And be it further enacted*, That where two or more persons who are partners in trade shall be adjudged bankrupt, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners, a warrant shall issue in the manner provided by this act, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted.]

**Who are partners.**—A partnership is held to exist, for the purposes of petitioning, so long as there are debts outstanding against the firm or undistributed assets belonging to it (*Hunt, Tillinghast & Co. v. Pooke & Steere*, 5 N. B. R. 161; *Fed. Cas.* 6896), and partnership liabilities. (*In re Gorham*, 18 N. B. R. 419; 11 *Chi. Leg. News*, 58; 26 *Pittsb. Leg. J.* 112; *Fed. Cas.* 5624.) Where this existence is the subject of inquiry, the declarations of an alleged partner are not competent evidence. (*Nudd and Noe v. Burrows, Ass.*, 13 N. B. R. 289; 91 U. S. 426.) A court may submit the question of the existence of a partnership to the jury, instead of charging them as a matter of law. (*In re Jelsh and Dunnebacke*, 9 N. B. R. 412; *Fed. Cas.* 7257.) The rights of firm creditors will not be affected by a dissolution of the firm by agreement of the members. (*Hudgins v. Lane and Smithson*, 11 N. B. R. 482; 2 *Hughes*, 361; *Fed. Cas.* 6827; *In re McFarland & Co.*, 10 N. B. R. 381; *Fed. Cas.* 8788.) Although one of its members has already been adjudicated on a creditors' petition, the firm may still be declared bankrupt. (*Hunt, Tillinghast & Co. v. Pooke & Steere*, 5 N. B. R. 161; *Fed. Cas.* 6896.)

Those having no voice in the control of, or interest in, a business, but who merely advance the funds to carry it on in another's name and who do not share in the profits, are not partners within the meaning of the Bankrupt Act. (*Moore et al. v. Walton et al.*, 9 N. B. R. 402; *Fed. Cas.* 9779.) But participation in the profits is presumptive evidence of partnership, and one who so participates will be held to be a partner as to third parties. (*In re Francis et al.*, 7 N. B. R. 359; 2 *Sawyer*, 286; 5 *Pac. Law Rep.* 2131; 4 *Leg. Op.* 493; 7 *Alb. Law J.* 13; *Fed. Cas.* 5031; *In re Blumenthal*, 18 N. B. R. 555; *Fed. Cas.* 1576.)

**When partners adjudicated.**—A firm may be adjudicated bankrupt whenever it is within the province of the bankrupt law to bring the debts of the partnership, or its credits and assets, within the control of the bankrupt court, and the partners cannot put an end to the power of the court by a mere dissolution of the firm. (*In re Noonan*, 10 N. B. R. 330; 5 *Chi. Leg. News*, 557; 30 *Leg. Int.* 425; 21 *Pittsb. Leg. J.* 73; *Fed. Cas.* 10292.) But where a firm is dissolved by judicial decree, and the assets transferred to a receiver, though there are firm debts, the firm cannot be adjudicated on the petition of one partner against his co-

partners. (In re Hopkins v. Carpenter et al, 18 N. B. R. 339; Fed. Cas. 6686.) Stockholders do not become copartners by reason of their joint and several liability, so that all the members of the corporation, as partners, would be liable to an adjudication in bankruptcy as a firm. (James, Adm'r, v. Atlantic Delaine Co. et al, 11 N. B. R. 390; Fed. Cas. 7179.) Two firms may share in a venture, and keep an account at a bank in the name of one firm, adding the word "Co.," and issue checks on their account so signed, and yet a partnership is not established between the firms so as to enable the holder of one of the checks to file a petition in bankruptcy against the members of both firms. (In re Warner et al, 7 N. B. R. 47; 4 Pac. Law Rep. 123; Fed. Cas. 17178.)

Parties may be adjudged bankrupts as partners in a firm with others, though they have already been declared bankrupts as partners in another firm. (In re Jewett et al, 15 N. B. R. 126; 7 Biss. 328; Fed. Cas. 7306; In re Jewett & Co., 16 N. B. R. 48; 7 Biss. 478; 4 N. Y. Weekly Dig. 494; 9 Chi. Leg. News, 345; 4 Law & Eq. Rep. 77; 23 Int. Rev. Rec. 232; Fed. Cas. 7307.) A partnership composed of a man and his wife can be adjudged bankrupt, and the wife may also individually be adjudged bankrupt. (In re Kinkead, 7 N. B. R. 439; 8 Biss. 405; 7 West. Jur. 110; 6 Amer. Law T. Rep. 45; 5 Chi. Leg. News, 217; Fed. Cas. 7324; In re Rathbone, 2 N. B. R. 89; 3 Ben. 50; 1 Amer. Law T. Rep. Bankr. 114; 1 Chi. Leg. News, 107; Fed. Cas. 11581.) Where persons associate themselves together, assuming to be a corporation and using a corporate name, without authority of law, they are individually liable as copartners for the debts of the association; and a creditor who has dealt with them as a corporation is not thereby estopped from proceeding against them individually. (In re Mendenhall, 9 N. B. R. 497; Fed. Cas. 9425.)

Partnerships engaged in trade are made subject to the provisions of the Bankrupt Act, and, on the petition of the partners or any of them, or of any creditor of the partners, such a partnership may be adjudged bankrupt. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395.)

Many decided cases support the proposition that the bankruptcy of one partner dissolves the partnership; but such an adjudication, obtained by one partner against another, will not be sustained if the real object of the petitioner is to dissolve the firm, and an adjudication is not required for any other purpose. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395.) Where, after dissolution of a copartnership, there has been no settlement, one member is not entitled to an adjudication of bankruptcy against his former partner on account of claims for money or assets which had come into his hands over and above his share, or on account of obligations entered into during the continuation of the partnership, for which both are jointly liable (In re Sigsby v. Willis, 3 N. B. R. 51; 3 Ben. 371; 1 Amer. Law T. Rep. Bankr. 171; 2 Amer. Law T. 169; Fed. Cas. 12349); nor can one or more members of a dissolved partnership which has no assets that would pass to an assignee obtain an adju-

dication against another member of the partnership without his consent. (In re Crockett, 2 N. B. R. 75; 2 Ben. 514; 2 Amer. Law T. Rep. Bankr. 21; Fed. Cas. 8402.)

Individual partners, if insolvent, may be adjudged bankrupt, even though the partnership is solvent and in good credit. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395.)

Proceedings may be joint so long as joint debts remain outstanding and unsettled, whether such proceedings are voluntary or involuntary. (In re Williams, 3 N. B. R. 74; 1 Lowell, 406; Fed. Cas. 17703.) Where there have been distinct firms of A. & B., and A. & C., the three persons cannot be joined in one proceeding in bankruptcy, even though the latter firm may have undertaken to pay the debts of the former. (In re Wallace & Newton, 12 N. B. R. 191; Fed. Cas. 17095.) A firm cannot be adjudicated bankrupt in an involuntary proceeding to which one of the members of the firm is not made a party. (In re Pitt et al., 14 N. B. R. 59; 8 Ben. 389; 23 Pittsb. Leg. J. 196; Fed. Cas. 11188.) And a member of a partnership which has been dissolved and which has no assets that would pass to an assignee cannot be adjudicated a bankrupt without his consent upon a petition of one or more members thereof. (In re Crockett, 2 N. B. R. 75; 2 Ben. 514; 2 Amer. Law T. Rep. Bankr. 21; Fed. Cas. 8402.) A secret partner, whose firm has committed an act of bankruptcy, may be adjudged a bankrupt, although individually entirely solvent. (In re Ess and Clarendon, 7 N. B. R. 133; 3 Biss. 301; 4 Chi. Leg. News, 357; 20 Pittsb. Leg. J. 34; 2 Md. Law Rep. 353; 1 Amer. Law Rec. 356; 6 Alb. Law J. 277; 6 West. Jur. 447; Fed. Cas. 4530.) Where a special partner had contributed a certain sum in cash and a certain amount in goods, it was held that all the partners could be adjudged bankrupts as general partners. (In re Merrill et al., 13 N. B. R. 91; 12 Blatchf. 221; 1 N. Y. Wkly. Dig. 364; Fed. Cas. 9467.)

**Proceedings instituted by whom.**—Who may commence proceedings against a partnership is a question that has been discussed quite extensively in bankruptcy cases. It has been held that a fraudulent misappropriation of the partnership funds by one partner entitles his copartner to institute proceedings and prove his claim against the wrong-doer the same as if no partnership had existed. (In re Sigsby v. Willis, 3 N. B. R. 51; 3 Ben. 371; 1 Amer. Law T. Rep. Bankr. 171; 2 Amer. Law T. 169; Fed. Cas. 12349.) Again, where no misappropriation of the partnership funds is shown, and a partner files a petition in bankruptcy against his copartner, the petition was dismissed. (Robinson et al. v. Hanway, 19 N. B. R. 289; 27 Pittsb. Leg. J. 21; Fed. Cas. 11953.) After proceedings have been commenced in a state court by one partner to put an end to the partnership and for an accounting, and the property is in the hands of a receiver, another member of the firm may file a petition in bankruptcy to have himself and the firm adjudged bankrupts (In re Noonan, 10 N. B. R. 330; 5 Chi. Leg. News, 557; 30 Leg. Int. 425; 21 Pittsb. Leg. J. 73;



Fed. Cas. 10292); but where a partnership is dissolved by the assignment by one member of his interest to a third person, the remaining partner was not entitled, under the act of 1867, to maintain a petition that the members of the original firm and the firm be adjudged bankrupt. (In re Hartough et al., 8 N. B. R. 107; Fed. Cas. 6164.) A petition for involuntary bankruptcy against a firm by one creditor of the firm and one creditor of an individual member of the firm is sufficient. (In re Matot et al., 16 N. B. R. 485; 5 N. Y. Wkly. Dig. 529; Fed. Cas. 9282.)

Where partners file a voluntary petition in bankruptcy and an adjudication is had and the property conveyed to an assignee, if parties who were copartners with the petitioners are not named in the petition, the court will not order the joinder of such parties on a bill filed by the creditors, but the creditors may have the same remedy against them as they would have had before the petition was filed. (Citizens' Nat. Bank v. Cass et al., 18 N. B. R. 279; 19 Alb. Law T. 119; 26 Pittsb. Leg. J. 25; Fed. Cas. 2782.) The refusal of one partner to join in voluntary proceedings instituted by the other partners may well deprive the one refusing from all benefit of a composition; but unless the refusal or neglect to join is the result of some fraud on the part of the partners who do carry on the proceeding, it is no reason for avoiding the proceeding as to them. (In re Henry et al., 17 N. B. R. 463; 9 Ben. 449; Fed. Cas. 6370.)

**Miscellaneous.**—Where a firm is insolvent, but one partner is solvent, the creditors may proceed against both, but the solvent partner would have an opportunity to clear himself by paying all the debts. (In re Bennett et al., 12 N. B. R. 181; 2 Lowell, 400; Fed. Cas. 1814.) When a partnership estate is being administered under the direction of the probate court, the bankruptcy court will not interfere upon petition by creditors of the firm; but this will not preclude a separate creditor of one of the copartners from proceeding against him individually. (In re Daggett, 8 N. B. R. 433; Fed. Cas. 3586.) Although individually entirely solvent, a secret partner whose firm has committed an act of bankruptcy may be adjudged a bankrupt. (In re Ess and Clarendon, 7 N. B. R. 133; 3 Biss. 301; 4 Chi. Leg. News, 357; 20 Pittsb. Leg. J. 34; 1 Amer. Law Rec. 356; 6 Alb. Law J. 277; 6 West. Jur. 447; Fed. Cas. 4530.) Upon a petition in bankruptcy by a late copartner for himself and against the other copartner, the firm and its members must be shown to be insolvent, and it is not enough to prove that the joint assets are insufficient to pay the joint liabilities. (In re Bennett et al., 12 N. B. R. 181; 2 Lowell, 400; Fed. Cas. 1814.) If a surviving partner holding the joint assets for purposes of administration commits an act of bankruptcy, the joint assets and his own separate estate may be taken under the bankrupt act. (In re Stevens, 5 N. B. R. 112; 1 Sawy. 397; 1 Pac. Law Rep. 45; Fed. Cas. 13398.) The decease of one partner prior to adjudication is not legal cause for dismissing the petition. (Hunt, Tillinghast & Co. v. Pooke et al., 5 N. B. R. 161; Fed. Cas. 6896.)

**Acts of bankruptcy.**—It is an act of bankruptcy to take the property of an insolvent firm to pay a debt which is not a partnership debt, but for which each of the partners is liable. (In re Matot et al., 16 N. B. R. 485; 5 N. Y. Wkly. Dig. 529; Fed. Cas. 9282.) It is not an act of bankruptcy in a solvent partner, to whom the whole stock has been transferred upon the dissolution of the partnership, to make a sale in gross of such stock. (In re Weaver, 9 N. B. R. 132; Fed. Cas. 17307.) Although a conveyance by a partner of his individual property was made with intent to hinder, delay or defraud firm creditors or give a preference, such conveyance, although an act of bankruptcy as against him, will not sustain a proceeding against the firm. (In re Redmond & Martin, 9 N. B. R. 408; Fed. Cas. 11632.) The transfer by one partner in good faith of his interest in the firm, prior to bankruptcy, is valid. (Shiner, Ass., v. Huber et al., 19 N. B. R. 414; 14 Phila. 402; 36 Leg. Int. 339; 8 Reporter, 393; Fed. Cas. 12787; Russell, Ass., etc. v. McCord, 17 N. B. R. 508; 2 Flip. 139; 3 Cin. Law Bul. 594; Fed. Cas. 157.) But it is otherwise where one partner transfers his interest to the other with the object of hindering or defeating creditors. (Burrill, Ass., v. Lawry, 18 N. B. R. 367; 2 Hask. 228; 11 Chi. Leg. News, 33; Fed. Cas. 2199.) Where a firm gives a chattel mortgage to secure a debt theretofore incurred by an individual member of the firm, for the firm's benefit, such act is not in fraud of the bankrupt law, being a mere adoption of the debt by the firm. (Wait, Ass., etc. v. Bank, 19 N. B. R. 500; Fed. Cas. 17043.)

See also ACTS OF BANKRUPTCY, sec. 3.

**Nature and effect of proceedings.**—Where a petition in involuntary bankruptcy is filed praying that certain copartners be adjudged bankrupts, and the debtors admit in writing that the petitioners represent the proper proportion of all creditors in number and amount, and an adjudication is entered, the adjudication is final. (In re Duncan et al., 15 N. B. R. 18; 8 Ben. 365; Fed. Cas. 4131.) A proceeding in bankruptcy instituted by one against his copartner is not an involuntary or compulsory proceeding. (In re Wilson, 13 N. B. R. 253; 2 Lowell, 453; Fed. Cas. 17784.) And a creditor cannot compel a debtor to go into voluntary bankruptcy, or compel partners to petition for the adjudication of alleged fellow partners. (In re Harbaugh et al., 15 N. B. R. 246; 15 Alb. Law J. 194; 23 Int. Rev. Rec. 50; 24 Pittsb. Leg. J. 100; Fed. Cas. 6045.) A petition of all the copartners is a purely voluntary petition. (In re Penn et al., 5 N. B. R. 30; 5 Ben. 89; 3 Chi. Leg. News, 225; Fed. Cas. 10927.) There are but two ways in which partners may be joined in a voluntary petition; either by their own act, or by the act of the partners petitioning. (Id.)

**Adjudications set aside.**—An adjudication will not be set aside, when had on a voluntary petition, for the purpose of making a newly discovered partner a party, if an interval of time has elapsed and rights of third parties have intervened. (In re Griffith et al., 18 N. B. R. 510; 26

Pittsb. Leg. J. 140; Fed. Cas. 5820.) Nor will an adjudication be set aside on the petition of a partner who joined in a voluntary proceeding with his copartners and actually assisted in the proceedings, where he makes his motion several months after adjudication. (In re Court et al., 17 N. B. R. 555; Fed. Cas. 3284.) A proceeding instituted by one partner for the purpose of vexing and harassing his copartner should be dismissed. (In re Hamlin et al., 16 N. B. R. 522; 8 Biss. 122; 10 Chi. Leg. News, 181; Fed. Cas. 5994.) One member of a firm cannot estop himself, as between himself and the firm's creditors, by any dealings with a partner, from any duty that he owes such creditors. (In re Gorham, 18 N. B. R. 419; 11 Chi. Leg. News, 58; 26 Pittsb. Leg. J. 112; 9 Biss. 23; Fed. Cas. 5624.) A voluntary proceeding by copartners requires no act of bankruptcy to be set forth, but only an averment that the debtors are unable to pay all their debts in full and are willing to surrender their estate. (In re Penn et al., 5 N. B. R. 80; 5 Ben. 89; 8 Chi. Leg. News, 225; Fed. Cas. 10927.)

b. The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

[Act of 1867. Sec. 36. . . . The assignee shall be chosen by the creditors of the company, . . . and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone.]

**Choice of trustee.**—The assignee shall be chosen, upon a partnership being adjudged bankrupt, by the creditors of the partnership. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395; Atkinson v. Kellogg, 10 N. B. R. 535; 7 Chi. Leg. News, 9; Fed. Cas. 618.) Such choice must be by a majority in number and value of creditors who have proved their claims. (In re Scheiffer et al., 2 N. B. R. 179; 1 Chi. Leg. News, 261; Fed. Cas. 12445.) In case of the separate bankruptcy of one member of a firm, a joint creditor is entitled to prove his joint debt and vote for assignee. (In re Webb, 16 N. B. R. 253; 4 Sawy. 326; 10 Chi. Leg. News, 27; 6 N. Y. Wkly. Dig. 174; Fed. Cas. 17817.) It has also been held that where one who is or has been a member of a firm is individually adjudicated bankrupt, the separate creditors are entitled to vote for assignee. (In re Falkner, 16 N. B. R. 508; Fed. Cas. 4624.)

**Administration.**—All the members of a firm petitioning for the benefit of the act are jointly and severally bound to make statements of their debts, whether copartnership or individual or due by them jointly with other persons not parties to the petition (In re Leland, 5 N. B. R. 222; Fed. Cas. 8228); but the fact that one member of a bankrupt firm did not file a schedule of debts or inventory of effects, nor deliver his property into the hands of the assignee, does not affect the right of the other

partners to receive a discharge. (In re Scofield et al., 8 N. B. R. 137; Fed. Cas. 12509.) A discharge in bankruptcy granted to a member of the firm is a release of joint debts as well as the separate debts, and binds copartners. (Wilkins v. Davis, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664.) Where a partnership petitions for a composition, the vote upon the resolution may be taken generally, or, upon demand, will be taken separately of the individual and of the partnership creditors (In re Spades, In re Muir and Foley, 13 N. B. R. 72; 6 Biss. 448; 8 Chi. Leg. News, 33; Fed. Cas. 13196); but a special partner has no right to vote in composition proceedings by the firm. (In re Henry, 17 N. B. R. 463; 9 Ben. 449; Fed. Cas. 6370.) A partner will not be allowed to have a composition set aside and his firm put into bankruptcy by setting up his own fraud in effecting the composition. (In re Hamlin et al., 16 N. B. R. 522; 8 Biss. 122; 10 Chi. Leg. News, 131; Fed. Cas. 5994.) Where a firm and one member commit an act of bankruptcy, and involuntary proceedings are commenced against the firm and its individual members and adjudication is had, the individual member may properly propose a composition to his creditors and the firm creditors, and such composition will be valid if accepted by the requisite number. (Pool v. McDonald et al., 15 N. B. R. 560; 9 Chi. Leg. News, 322; 4 Law & Eq. Rep. 27; 2 Cin. Law Bul. 151; Fed. Cas. 11368.)

c. The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

[Act of 1867. SEC. 36. . . . If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.]

**Jurisdiction.**—In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy, each of which has jurisdiction, the case must be transferred, by order of the court relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest. (Sec. 32.) In general, a firm can only be sued in their domicile and only place of business. (Cameron v. Canio & Co., 9 N. B. R. 527; Fed. Cas. 2340.)

Where a firm does business and one member lives in the United States, the court has jurisdiction as to him in involuntary proceedings in bankruptcy, though another member of the firm does not reside in this country. (In re Burton et al., 17 N. B. R. 212; 9 Ben. 324; Fed. Cas. 2214.) A member of a firm residing in one state and doing business in another may have proceedings in the district of his domicile stayed

and have exclusive jurisdiction allowed to the court of the district in which the joint business is carried on and in which his partner resides, against whom proceedings have also been instituted. (In re Smith, 8 N. B. R. 15.) In a case where a petition in bankruptcy was filed against the members of a firm, who were two of the three members of a firm against whom a petition had been filed in another district three weeks previously, and upon which an assignee had taken possession, the second petition was dismissed for want of jurisdiction. (In re Leland, 5 N. B. R. 223; Fed. Cas. 8228.) Where a petition is filed asking to have a firm declared bankrupt, if all the members of the firm do not join in or assent to the petition, notice of its filing must be given to such members as do not join in it or assent to it in like manner as if the proceedings were on an involuntary bankruptcy against the members of the firm. Until such notice is given there is no authority to the court to make an adjudication against the firm. (In re Lewis, 1 N. B. R. 19; 2 Ben. 96; Fed. Cas. 8311.) An adjudication obtained by one member of a firm without giving notice to the other member is void. In re Temple, 17 N. B. R. 845; 4 Sawy. 62; Fed. Cas. 18825.) On a voluntary petition for the adjudication of a firm, the court has jurisdiction to determine the question of who constitute the firm, and an adjudication is valid, based on the determination of such fact, until set aside or reversed. (In re Griffith et al., 18 N. B. R. 510; 26 Pittsb. Leg. J. 140; Fed. Cas. 5820.)

*d.* The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

[Act of 1867. Sec. 36. . . . the assignee . . . shall also keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; . . .]

**Trustees' accounts.**—The trustee must keep a separate account of the joint stock of the copartnership and of the individual estate of each member, but the expenses and disbursements are taken out of the property received by the assignee without reference to the fact whether it was collected from the partnership or the separate estate. (Atkinson v. Kellogg, 10 N. B. R. 535; 7 Chi. Leg. News, 9; Fed. Cas. 613; Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395.) Though the assignees in bankruptcy of the joint stock and property of a copartnership are required to administer the separate estate of the individual members of the firm as well as the described estate of copartnership, the same rule does not apply where an individual member of a copartnership is adjudged a bankrupt without such decree against the copartnership. (Id.)

**Assignees' title.**—The assignee of a bankrupt firm takes by the assignment all the property of the firm and of the individual members thereof, even though part of the property may be out of the district in which the bankrupts reside and owned in part by partners who are not joined in the bankruptcy proceedings. (In re Leland, 5 N. B. R. 222; Fed. Cas. 8223.) He may recover property transferred by one partner in violation of the Bankrupt Act (Barnewall & Gaynor, Ass. v. Jones, Dunn & Crawford, 14 N. B. R. 278; Fed. Cas. 1027; Phipps et al. v. Sedgwick, Ass., etc., 16 N. B. R. 64; 95 U. S. 3; In re Tomes et al., 19 N. B. R. 36; Fed. Cas. 14984), or money taken from the partnership assets and paid as money of the copartnership, if it can be recovered. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395.) Where at the time a firm is adjudged bankrupt there is pending an action for accounting by one partner against the other, the right to continue the suit passes to the assignee. (In re Clark & Bininger, 3 N. B. R. 123; 4 Ben. 38; 1 Amer. Law T. Rep. Bankr. 189; Fed. Cas. 2798.)

An assignee of the estate of an individual partner has no such title as will enable him to call third parties to an account for partnership property, and he cannot recover back money previously paid to a creditor of the partnership upon the ground that the money was paid to such creditor in fraud of the other creditors of the firm. (Amsink et al. v. Bean, Ass., 11 N. B. R. 495; 22 Wall. 395; In re Shepard, 3 N. B. R. 42; 3 Ben. 347; Fed. Cas. 12754; Hudgins v. Lane & Smithson, 11 N. B. R. 462; 2 Hughes, 361; Fed. Cas. 6827; Forsaith, Ass. v. Merritt, 3 N. B. R. 11; 1 Lowell, 336; 2 Amer. Law T. 123; 1 Amer. Law T. Rep. Bankr. 168; Fed. Cas. 4946; Withrow v. Fowler, 7 N. B. R. 339; 6 Alb. Law J. 422; Fed. Cas. 17919.) But where a surviving partner is adjudged a bankrupt as such, and as an individual, his assignee is entitled to the partnership assets. (In re Temple, 17 N. B. R. 345; 4 Sawy. 62; Fed. Cas. 13825.) Though the assignee of a bankrupt partner has no authority to call third parties to account for partnership property, the bankrupt's share in the joint estate vests in his assignee though the firm is not declared bankrupt (Wilkins v. Davis, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664); and the assignee may recover from a solvent partner, either at law or in equity, what is due under the articles of copartnership. (Id.)

c. The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

**Expenses of administration.**—Where there are assets of the firm and of one or more individual members, the joint estate and the individual estates must each pay its proportion of the expenses of administration. (In re Smith and Smith, 13 N. B. R. 500; Fed. Cas. 12987; Atkinson v. Kellogg, 10 N. B. R. 535; 7 Chi. Leg. News, 9; Fed. Cas. 613.) Except in

the matter of expense, it is of no consequence whether there are two proceedings or only one by or against partners, for the rights of creditors and others are the same. (In re Morse, 18 N. B. R. 376; Fed. Cas. 9854.)

*f.* The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

[Act of 1867. SEC. 36. . . . and after deducting out of the whole amount received by such assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the co-partnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors, and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this act.]

**General rule of distribution.**— Where there are individual creditors and partnership creditors, and individual assets and partnership assets, the individual creditors must resort to the individual assets and the joint creditors to the partnership assets. (In re Jewett, 1 N. B. R. 131; 7 Amer. Law Reg. (N. S.) 294; 1 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 7909; In re Byrne, 1 N. B. R. 122; 7 Amer. Law Reg. (N. S.) 499; 1 Amer.

Law T. Rep. Bankr. 122; 15 Pittsb. Leg. J. 315; Fed. Cas. 2270; In re McLean et al., 15 N. B. R. 333; Fed. Cas. 8879.) This rule only applies where both estates are before the court for distribution. (United States v. Lewis et al., 18 N. B. R. 33; Wkly. Notes Cas. 31; 22 Int. Rev. Rec. 39; 32 Leg. Int. 371; 23 Pittsb. Leg. J. 34; Fed. Cas. 15595; In re Pease, 13 N. B. R. 168; Fed. Cas. 10881.) Though it has been held that where there is no joint estate, the joint creditors can receive no dividends until the individual creditors have been fully paid (In re Byrne, 1 N. B. R. 122; 7 Amer. Law Reg. (N. S.) 499; 1 Amer. Law T. Rep. Bankr. 122; 15 Pittsb. Leg. J. 315; Fed. Cas. 2270), the later cases deny this doctrine, and it seems not to be the present law. (In re Knight, 8 N. B. R. 436; 30 Leg. Int. 338; 21 Pittsb. Leg. J. 43; Fed. Cas. 7880.) But where a partnership has been dissolved, and one of the copartners purchases all of the assets of the firm, agreeing to pay all of the debts; and both partners subsequently become bankrupt and are individually put into bankruptcy so that there is no solvent partner and no firm property, the creditors of the firm, and the individual creditors of the partner who assumed to pay the firm debts, are entitled to share *pari passu* in the estate of such partner. (In re Downing, 3 N. B. R. 193; 1 Dill. 33; 17 Pittsb. Leg. J. 169; 3 Amer. Law T. 165; 2 Chi. Leg. News, 265; 1 Amer. Law T. Rep. Bankr. 207; Fed. Cas. 4044; In re Collier, Taylor & Co., 12 N. B. R. 266; Fed. Cas. 3002; In re Rice, 9 N. B. R. 373; 21 Pittsb. Leg. J. 159; Fed. Cas. 11750.) The individual and partnership creditors share equally in the distribution of assets where both classes of debts have been incurred upon the strength of the possession of the property owned by a member of the firm. (In re Goedde & Co., 6 N. B. R. 295; Fed. Cas. 5500.) And where there are both individual and partnership creditors of a bankrupt, and the assets are individual only, but mainly consist of goods purchased by the bankrupt from the partnership on its dissolution prior to bankruptcy, and are the same goods in the purchase of which the partnership debts originated, the partnership creditors will be entitled to be paid *pari passu* with the individual creditors. (In re Jewett, 1 N. B. R. 130; 7 Amer. Law Reg. (N. S.) 294; 2 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 7303.) Again, when all the assets of a bankrupt firm are expended in the payment of costs, and there is no fund to be divided among the firm creditors, the firm and individual creditors must be paid *pari passu* out of the separate estate of each partner. (In re McEwen & Sons, 12 N. B. R. 11; 6 Biss. 294; 7 Chi. Leg. News, 231; 2 Cent. Law J. 233; Fed. Cas. 8783.) A promise by a partner to pay all the firm debts may be enforced by the firm creditors, although they were not cognizant of the promise when made, and although the consideration did not move from them. (In re Collier, Taylor & Co., 12 N. B. R. 266; Fed. Cas. 3002.)

It has been held that the rule preferring partnership property to the payment of partnership debts is for the benefit of the partners and they



may waive it. (In re Kahley, 4 N. B. R. 124; 8 Chi. Leg. News, 85; 9 Leg. Gaz. 405; Fed. Cas. 7593.) Subject to the above rule, the assets of the separate and individual estate of members of a copartnership as well as that of the partnership may be resorted to for payment of a copartnership debt. (Mead, Ass., v. Bank of Fayetteville, 2 N. B. R. 665; 7 Amer. Law Reg. (N. S.) 818; 1 Amer. Law T. Rep. Bankr. 108; 15 Pittsb. Leg. J. 137; Fed. Cas. 9366.)

**Claims of firm creditors.**—The creditors of a firm of A. & C. are entitled to priority of payment out of the assets of the firm, even as to property acquired from a firm of A. & B. by the dissolution of that firm, under an agreement by A. to pay certain partnership debts with reference to it and against those debts. Such debts are to be paid out of any surplus due A. in the sale of the property. (Crane, Ass., v. Morrison et al., 17 N. B. R. 393; 4 Sawy. 138; Fed. Cas. 3355.) A firm which indorses a note given by a member which falls due after the firm's bankruptcy need not have notice of the dishonor of such note in order to prove it against the assets. (Ex parte Russell, In re Paul & Son, 16 N. B. R. 476; Fed. Cas. 12148.) If a firm are accommodation indorsers upon notes, the holder of these notes, who also holds collateral security therefor, has a valid claim against the firm, and such claim may be proved as if unsecured. (In re Dunkerson & Co., 12 N. B. R. 413; 4 Biss. 253; Fed. Cas. 4157; Ex parte Whiting, In re Dow et al., 14 N. B. R. 307; 2 Lowell, 472; Fed. Cas. 17573.)

The purchase of both partners' interests at sales under different executions does not enlarge the interest acquired nor relieve the assets from the claims of partnership creditors. (Osborne v. McBride, 16 N. B. R. 22; 3 Sawy. 590; Fed. Cas. 10593.) Where the individual property of a member of a firm is security for the partnership debts, the creditor may prove, and indeed is bound to prove at the request of the separate creditors, his whole debt against the joint assets; but only the deficiency after disposing of the security may be proved against the separate assets of an individual partner. (In re May & Co., 17 N. B. R. 192; Fed. Cas. 9327.) An accommodation note indorsed by one member of a partnership without the knowledge or consent of the other is not a claim provable against the firm (In re Irving, 17 N. B. R. 22; Fed. Cas. 7074); nor is a right of action for the misrepresentation of a firm's condition, afterward bankrupt, such a claim. (In re Schuchardt and Wells, 15 N. B. R. 161; 8 Ben. 585; Fed. Cas. 12483.) Where a firm became bankrupt, and a creditor of a former firm not bankrupts, one of the members of which was a member of the bankrupt firm, asked that the assets remaining after the payment of the individual debts of the partner be merged with those of the bankrupt firm, and that the debts of such creditor should be paid therefrom, the creditor's claim was rejected as against the firm. (In re Dunkerson & Co., 12 N. B. R. 391; 4 Biss. 323; 1 N. Y. Wkly. Dig. 179; Fed. Cas. 4159.) It is said that joint creditors of partners are entitled to

share equally with the partnership creditors in the partnership assets. (In re Nims et al., 18 N. B. R. 91; 26 Pittsb. Leg. J. 11; Fed. Cas. 10268.) When a man and his wife hold themselves out to the world as partners in trade and the firm becomes bankrupt, the partnership creditors are entitled to be paid in preference to individual creditors of the husband out of the partnership assets. (In re Kinkead, 7 N. B. R. 439; 3 Biss. 405; 7 West. Jur. 110; 6 Amer. Law T. Rep. 45; 5 Chi. Leg. News, 217; 1 Amer. Law Rec. 533; Fed. Cas. 7824.) Where two parties enter into a partnership, and by the partnership contract it is agreed that the firm shall assume the individual debts if the firm becomes bankrupt, and one of the individual creditors seeks to prove his claim against the firm assets, there being no evidence that the creditor consented to the conversion of liabilities before bankruptcy, the rule as to payment of individual and partnership debts will prevent the proving of the claim. (In re Isaacs et al., 6 N. B. R. 92; 3 Sawy. 35; Fed. Cas. 7093.) Where commercial paper is indorsed by a firm in its firm name and also by the individual name of one partner, and the maker of the note becomes embarrassed and the indorsers are thrown into bankruptcy, if the holders accept, with the permission of the court, a percentage of the face of the note from the makers, they are only entitled to dividends from the estates of the firm and the individual partner to an amount equal to the difference between the face of the note and the percentage received from the makers. (In re Howard et al., 4 N. B. R. 185; Fed. Cas. 6750.) If one partner, to raise money for the firm, indorses their paper and pledges securities belonging to himself, the holders of the notes after the bankruptcy of the firm may sell the security and yet receive from the joint fund a sum equal to a dividend on the notes. (In re Foot et al., 12 N. B. R. 337; 8 Ben. 228; 1 N. Y. Wkly. Dig. 76; Fed. Cas. 4906.) A firm creditor does not lose his right against the firm or the assets of the firm by proving his debt in bankruptcy proceedings against a single partner. (Hudgins v. Lane et al., 11 N. B. R. 462; 2 Hughes, 361; Fed. Cas. 6827.) Notes drawn by one partner in the firm name, apparently in the course of partnership business, without *malu fides* or actual knowledge by the holder of want of authority or intended misapplication, entitle the holder to their allowance against the bankrupt estate of the firm (Bush v. Crawford, Ass., 7 N. B. R. 299; 9 Phila. 392; 20 Pittsb. Leg. J. 65; Fed. Cas. 2224, reversing In re Dunkle et al., 7 N. B. R. 107; Fed. Cas. 4161); but a note given in an individual transaction of one of the bankrupts, though signed in the firm name, is not provable in bankruptcy against the firm assets. (In re Forsyth et al., 7 N. B. R. 174; Fed. Cas. 4948.) Where most of the firm debts were purchased in the interest of two of the copartners by friends to whom they furnished money, the third copartner not contributing, the amount paid for such debts will be refunded from the firm assets, although the third copartner objects to such refunding. (In re Lathrop et al., 5 N. B. R. 43; 5 Ben. 199; Fed. Cas. 8104.) In the pay-

ment of partnership debts the assets of the firm must be applied without any reference to any disproportion of the interests of the individual partners as between themselves. (In re Lowe and Richards, 11 N. B. R. 221; Fed. Cas. 8564.) A note given by each of the members of a firm individually, the consideration of which went into the company business, is held to be a partnership note. (In re Thomas & Sivyver, 17 N. B. R. 54; 8 Bias. 189; 6 Cent. Law J. 151; Fed. Cas. 18886.) Where, pending proceedings to declare partners, individually and as a firm, bankrupt, a party acquires by purchase the separate interests of both partners in the firm, he only acquires an interest in such assets as remain after the firm's partnership debts are paid, and he is not a firm creditor. (Osborne v. McBride, 16 N. B. R. 22; 3 Sawy. 590; Fed. Cas. 10598.)

**Rights and liabilities of individual partners.**—Under the rule heretofore stated individual creditors are entitled to priority of payment from the individual assets of the partners. (In re Smith and Smith, 13 N. B. R. 500; Fed. Cas. 12987.) Where upon the dissolution of a partnership, one partner takes the accounts and notes of the firm and the other the stock in trade, to which he adds, and with which he continues the business, the stock in the hands of the latter, upon the subsequent bankruptcy of the former partners, will be held primarily liable for his individual debts. (In re Montgomery, 3 N. B. R. 109; 3 Ben. 565; Fed. Cas. 9727.) Where creditors held paper executed by the individual members of a partnership, although the original consideration has passed to the partnership, said partner becoming bankrupt, the creditors will be held to be the individual creditors of each of the bankrupts. (In re Bucyrus Machine Co., 5 N. B. R. 304; Fed. Cas. 2100.) A firm note issued to a partner for his share of the capital stock, and by him transferred to his wife, by whom such capital was advanced, may be proven against the individual estate of such partner, but not against the partnership. (In re Frost & Westfall, 3 N. B. R. 180; Fed. Cas. 5135.) A bond whereby several members of a firm bind themselves jointly and severally to pay the amount therein expressed may be proven against and paid from the assets of the individual estate of such member of the firm. (In re Bigelow et al., 2 N. B. R. 121; 3 Ben. 146; 2 Amer. Law T. Rep. Bankr. 41; Fed. Cas. 1397.) A creditor who has a claim against a firm, and has proved it against the estate of two of said firm who took the assets and assumed the debts of said firm, may prove for any balance due him against the third member of the firm who subsequently becomes bankrupt. (In re Pease, 13 N. B. R. 168; Fed. Cas. 10881.) Firm creditors must be postponed to separate creditors, when partners file separate petitions, whether there are joint assets or not. (In re Morae, 13 N. B. R. 376; Fed. Cas. 9654.) A judgment obtained against partners and others jointly has been held to be a several claim against the bankrupts and not entitled to a dividend from the joint estate. (In re Herrick and Herrick, 13 N. B. R. 312; Fed. Cas. 6430.) Where two partners, who were afterwards

adjudged bankrupts in separate suits, dissolved partnership, but one partner carried on the business in the firm name with the consent of his co-partner, it was held that the firm creditors had a right to prove against the interest which the retired partner had in the business. (*In re Morse*, 18 N. B. R. 376; Fed. Cas. 9854.) Where a partner retires from the firm and agrees to pay all partnership debts as between themselves the remaining partner is a surety for the retiring partner; but in case such surety has not actually paid any of the debts, he cannot prove his claim against the estate of the retiring partner for the excess of such debts over the dividends to be paid. (*In re Phelps*, 17 N. B. R. 144; 9 Ben. 286; Fed. Cas. 11070.) A joint creditor can prove under a separate bankruptcy, though not to compete in the separate assets, and may vote for assignee, and be heard on the discharge, and examine the debtor, and share any joint assets or any surplus of the separate assets. (*Wilkins v. Davis*, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664.) A partnership creditor has such an interest in the separate property of any of the partners that he may proceed on a petition in involuntary bankruptcy against one partner alone upon proof of his debt. (*In re Melick*, 4 N. B. R. 26; Fed. Cas. 9390.) A bankrupt partner, though liable to the joint creditors for the whole debt, is entitled to the benefit of the payment by the solvent partner to the amount of said solvent partner's liability. (*In re Jay Cooke & Co.*, 12 N. B. R. 30; 1 Wkly. Notes Cas. 318; Fed. Cas. 3170.) If the creditor had recourse to the estate of a deceased partner for what may have been due him, he is not precluded from an equal participation in the funds of an assignee of one who was a partner and indebted to the deceased, and who afterward became bankrupt. (*In re William Mills*, 11 N. B. R. 74; Fed. Cas. 9611.) Under the law of 1867, although the claim of the United States was against a firm, it was entitled to priority of payment out of the individual estates of the partners. (*United States v. Lewis et al.*, 13 N. B. R. 33; 2 Wkly. Notes Cas. 31; 22 Int. Rev. Rec. 39; 32 Leg. Int. 371; 23 Pittsb. Leg. J. 34; Fed. Cas. 15595; *Lewis, Trustee, v. United States*, 14 N. B. R. 64; 92 U. S. 618.) Where one of the members retired from the firm, but permitted his name to be used, although notice of his separation was published, and the firm exchanged notes with a third party, who sold for value before maturity, the firm becoming bankrupt, the former partner was held liable on the note. (*In re Kreuger et al.*, 5 N. B. R. 439; 2 Lowell, 66; Fed. Cas. 7941.)

Where an execution lien has been obtained in good faith before bankruptcy on the individual property of a member of a firm under a judgment against the firm, the statutory lien will not yield to the equity of the separate creditors of that partner. (*In re Sandusky*, 17 N. B. R. 432; 10 Chi. Leg. News, 204; Fed. Cas. 12308.) But it appears that such partner has a lien on the real estate of the firm until the debts are paid, to indemnify him in the event of his having to pay them. (*Thrall v. Crampton, Ass., etc.*, 16 N. B. R. 261; 9 Ben. 218; Fed. Cas. 14008.) Where land

owned by a bankrupt individually has been sold by his assignee, and the proceeds are claimed under a judgment first in order obtained by a creditor against a firm of which the bankrupt was a member, and also by an individual creditor of the bankrupt whose judgment is subsequent in time to that of the partnership creditor, the judgment on the partnership debt will be held to be a lien on the individual property of the bankrupt. (In re Lewis, 8 N. B. R. 546; 2 Hughes, 820; 21 Pittsb. Leg. J. 77; Fed. Cas. 8313.)

**Claims against both estates.**—The holder of a note given by a firm and also by an individual member of the firm is entitled to receive dividends from the estates of both. (Emery et al. v. Canal National Bank, 7 N. B. R. 217; 8 Cliff. 507; 6 West. Jur. 515; Fed. Cas. 4448; In re Long, 9 N. B. R. 227; 7 Ben. 141; Fed. Cas. 8476.) If an administrator of an estate uses funds of the estate for purposes of a firm of which he was a member, an account thereof being kept on the books of the firm to the credit of the estate, a joint and several claim is thereby created against the firm estate and the estate of the administrator, but an administrator *de bonis non* could not make this proof. (In re Jordan et al., 19 N. B. R. 465; In re Tesson et al., 9 N. B. R. 378; Fed. Cas. 18844.) A creditor holding the note of a copartnership indorsed by one of its members has the right of election between the individual and the copartnership funds. (Stephenson v. Jackson, 9 N. B. R. 255; 2 Hughes, 204; Fed. Cas. 18374.) Slightly different from this last is a decision in a case where one proved a judgment against the estate of a firm, and, after a dividend was declared, proved the debt against the separate estate of one member of the firm, alleging that the note on which it was based was executed by him and indorsed by the other member of the firm, in which the second proof was expunged. (In re Herrick et al., 18 N. B. R. 313; Fed. Cas. 6420.) Where one member of the copartnership, upon the firm's dissolution, receives the firm assets and agrees to pay the firm debts, upon the subsequent bankruptcy of the firm, the firm creditors, at their election, prove as separate creditors of the liquidating copartner's estate, and share *pari passu* with the individual creditors. (In re Long, 9 N. B. R. 227; 7 Ben. 141; Fed. Cas. 8476.) B., a member of the firm of B. & Co., was treasurer of a corporation for which B. & Co. were general business agents, authorized to receive and disburse moneys, except subscriptions to its capital stock. B. received subscriptions and paid the money into the business of his firm. No acquiescence on the part of the corporation appeared. The court held that both B. and B. & Co. were liable, and proof could be made against both estates. (In re Baxter et al., 18 N. B. R. 62; Fed. Cas. 1119.)

**Firm assets.**—Where real estate held by partners as tenants in common is classified in the schedule of assets as partnership assets, such classification will not convert the separate property of the individual partners into firm property, in derogation of the rights of separate cred-

itors, and the proceeds arising from a sale of such real estate by an assignee are assets of the individual members of the firm. (In re Zugg et al., 16 N. B. R. 280; 34 Leg. Int. 402; 23 Int. Rev. Rec. 392; Fed. Cas. 18222.) The intent to consider realty to be partnership assets may be implied from the fact that the losses are to be sustained by the assets of the firm, and the profits are to augment the capital. (Hiscock, Ass., etc. v. Jaycox & Green, 12 N. B. R. 507; Fed. Cas. 6531.) A judgment recovered against the members of a bankrupt firm cannot be paid out of the proceeds of the sale of real property, the legal title to which is in a partner who was not served with process. (In re Hinds et al., 3 N. B. R. 91; Fed. Cas. 6516.) A manufacturing firm became bankrupt and a composition was effected. A creditor of an individual member of the firm asked that the assignee be restrained from applying the factory in which the firm did business to the payment of the firm debts, alleging that one undivided third thereof was the separate property of her debtor. The court held that oral evidence might be received to prove that the lands were the property of the partnership, and such evidence being clear, the property was to be treated as partnership assets. (In re Farmer et al., 18 N. B. R. 207; 10 Chi. Leg. News, 395; Fed. Cas. 4650.)

**Individual assets.**—By "separate estate," in the meaning of the Bankrupt Act, is meant that property in which each partner is separately interested to the exclusion of other partners at the time of the bankruptcy. (In re Lowe and Richards, 11 N. B. R. 221; Fed. Cas. 8564.) If certain partners, more than four months before the commencement of bankruptcy proceedings, transfer all their property, both separate and joint, to one partner, who undertakes to pay the firm debts, all the assets will be treated as the separate assets of that partner. (In re Collier, Taylor & Co., 12 N. B. R. 266; Fed. Cas. 3002.) Buildings built with partnership funds by one member of the firm on property owned solely by such member become part of the realty and the separate property of such partner. (In re Parks et al., 9 N. B. R. 270; Fed. Cas. 10765.) A *bona fide* transfer of partnership effects by one member of the partnership to another vests the title in the transferee as his separate estate. (In re Byrne, 1 N. B. R. 122; 7 Amer. Law Reg. (N. S.) 499; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 2270.) A partner conveyed certain property in fraud of creditors, and afterwards creditors of the firm obtained judgments against the firm and docketed them. Subsequently the firm and its members were adjudged bankrupts, and upon a suit to have the conveyance set aside the property was sold free from liens, and the proceeds brought into court. The court held that the lien of the judgments did not attach and the property was the separate estate of the partner, and must be first applied to the payment of his separate creditors. (In re Estes & Carter, 19 N. B. R. 430; Fed. Cas. 4536.)

**Claims between the estates.**—Where all the parties become bankrupt, the general rule is that the separate estate of one partner shall not claim

against the joint estate of the partnership in competition with the joint creditors, nor shall the joint estate claim against the separate estate in competition with the separate creditors (*Amsink et al. v. Bean, Ass.*, 11 N. B. R. 495; 22 Wall. 395; *In re McEwen & Sons*, 12 N. B. R. 11; 6 Biss. 294; 7 Chi. Leg. News, 231; 2 Cent. Law J. 233; Fed. Cas. 8788), unless there is a surplus of the joint estate to be divided (*In re Lane & Co.*, 10 N. B. R. 135; 2 Lowell, 333; Fed. Cas. 8044); though it has been said that a debt of an individual member of a firm which is bankrupt and of which he is a creditor should be admitted to proof, and if correctly proven he should share in dividends. (*Buckhause v. Gough*, 10 N. B. R. 206; 2 Lowell, 331; Fed. Cas. 2066.) Debts due by the bankrupt partner to the partnership are entitled to priority over debts due by him to his separate creditors, and if the joint funds prove insufficient to discharge his debt to the partnership, the solvent partners have a right to prove the deficiency against the separate estate of the bankrupt *pari passu* with the separate creditors. (*Amsink et al. v. Bean, Ass.*, 11 N. B. R. 495; 22 Wall. 395.) It has been held that if one member of a firm withdraws money therefrom for his private purposes, but such withdrawal is not fraudulent as against his copartners, the assignee of the firm cannot prove therefor against the separate estate of such partner, even if the firm estate was known to be insolvent at the time. (*In re May et al.*, 19 N. B. R. 101; Fed. Cas. 9328.)

A firm, all of whose members are partners in another firm, cannot prove its debts against the latter. (*In re Savage*, 16 N. B. R. 368; Fed. Cas. 12381.) A claim of one firm of which the bankrupt is a partner against another firm of which he is a partner is not a debt provable in bankruptcy against him. (*In re Lloyd*, 15 N. B. R. 257; 5 Amer. Law Rec. 679; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 118; Fed. Cas. 8429.) In general, a bankrupt creditor of his bankrupt copartner has the *residuum* of the estate, separate and joint, belonging to the latter after all the separate creditors of the debtor bankrupt and the joint debts of the firm are paid, but not before (*In re McLean et al.*, 15 N. B. R. 333; Fed. Cas. 8879); and a solvent partner cannot prove against the separate estate of the bankrupt partner in competition with the separate creditors of the bankrupt until all the joint creditors of the partnership are paid or fully indemnified. (*Amsink et al. v. Bean, Ass.*, 11 N. B. R. 495; 22 Wall. 395.) A member of a copartnership of banking firms, termed a syndicate, became bankrupt, having in its possession a sum of money in excess of its own share of the profits of the syndicate. Another member of the syndicate sought to prove a claim for the whole amount so held, on behalf of itself and its associates. It was held it could claim only the difference between the whole amount and the bankrupt's share. (*In re Jay Cooke & Co.*, 12 N. B. R. 30; 1 Wkly. Notes Cas. 818; Fed. Cas. 8170.) A partner who has had to pay all the firm debts can prove against his bankrupt partner his proportion of the debts which he has paid, and an agreement in respect thereto which is set aside as void will not pre-

vent him from claiming this right of contribution (*In re Stephens*, 6 N. B. R. 533; Fed. Cas. 13365); and a former partner, or a joint covenantor with bankrupts who is liable for joint debts and pays them, may prove the amount against the assets of his former partners or of his co-contractors. (*Ex parte Lake et al.*, *In re Whiting et al.*, 16 N. B. R. 497; 2 Lowell, 544; Fed. Cas. 7991.) Where one of two partners sells his interest in the concern to his copartner, taking his notes therefor, and the second partner becomes bankrupt, leaving some of the notes unpaid, the first partner cannot receive a dividend from the assignee until all the partnership debts have been paid. (*In re Jewett*, 1 N. B. R. 131; 7 Amer. Law Reg. (N. S.) 294; 2 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 7309.) A partnership is not entitled to retain toward the payment of its debt the surplus arising from the securities held by one partner for his debt. (*Sparhawk et al. v. Drexel et al.*, 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.) Where a debtor is duly adjudged a bankrupt, and a creditor presents against the estate proof of a debt contracted by a former firm, of which the bankrupt had been a member, the debt is provable. (*In re Frear*, 1 N. B. R. 201; 2 Ben. 467; 35 How. Pr. 249; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 5074.)

Where a decree has been rendered against a firm for a debt which is paid out of the firm assets, the solvent partner cannot be subrogated to the rights of the creditor of the firm who obtained the decree, his share of the amount paid, against the separate estate of a bankrupt partner, as against that partner's other creditors. (*In re Smith*, 16 N. B. R. 113; Fed. Cas. 12921.)

**Adjudication of one partner.**—A man cannot be discharged from his liabilities as a member of a firm unless the debts and assets of the firm are considered and adjudicated upon by the court. (*Hudgins v. Lane et al.*, 11 N. B. R. 462; 2 Hughes, 361; Fed. Cas. 6827; *Corey et al. v. Perry et al.*, 17 N. B. R. 147; *In re Noonan*, 10 N. B. R. 330; 5 Chi. Leg. News, 557; 30 Leg. Int. 425; 21 Pittsb. Leg. J. 73; Fed. Cas. 10292; *In re Winkens*, 2 N. B. R. 113; 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53; Fed. Cas. 17875; *Crompton et al. v. Conkling*, 15 N. B. R. 417; Fed. Cas. 3108; *In re Brick*, 19 N. B. R. 508. *Contra*, *In re Frear*, 1 N. B. R. 201; 2 Ben. 467; 35 How. Pr. 249; Fed. Cas. 5074; *In re Stevens*, 5 N. B. R. 112; 1 Sawy. 397; 1 Pac. Law Rep. 45; Fed. Cas. 13393.) But where there are no partnership assets to be administered, and a member of a late copartnership files his individual petition and inserts debts of the copartnership, he will be entitled to be discharged from all of his debts, and it is unnecessary that other partners be made parties to the proceeding. (*In re Abbe*, 2 N. B. R. 26; 7 Amer. Law Rep. (N. S.) 824; 15 Pittsb. Leg. J. 589; Fed. Cas. 4; *In re Bidwell*, 2 N. B. R. 78; Fed. Cas. 1392.)

Where one partner is adjudicated a bankrupt on his individual petition, without notice to his fellow partners, the assignee should institute



proceedings in bankruptcy against the firm, as such partner cannot be properly discharged until the firm debts are paid or the social assets administered in the bankrupt court. (In re Grady et al., Ass., v. Hawthorne, 3 N. B. R. 54; Fed. Cas. 5654.) A firm expired by limitation and the interests of all the partners were transferred to one of them by bills of sale, he agreeing to apply firm assets to payment of firm debts. Later he filed a voluntary petition in bankruptcy, and the firm assets and debts were included in his schedule. It was held that, to the end of having firm assets applied to firm debts, the other members should intervene and have the firm adjudicated bankrupt. (In re Gorham, 18 N. B. R. 419; 11 Chi. Leg. News, 58; 26 Pittsb. Leg. J. 112; Fed. Cas. 5624.) Where the several members of a firm file several petitions, and there are firm assets, the estate of the firm is not in the bankruptcy court so as to operate a discharge of the firm debts, even though the several petitions set out the partnership assets and liabilities and though they have a common assignee. (In re Plumb, 17 N. B. R. 76; 9 Ben. 279; Fed. Cas. 11231.)

The control of the settlement of the joint affairs may be intrusted by a court of equity either to the assignee or the solvent partner, as the partnership is dissolved by the bankruptcy of one partner. (Wilkins v. Davis, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664; Blackwell v. Claywell et al., 15 N. B. R. 800.) The mere filing of a petition in bankruptcy by one partner against his copartner does not prevent the latter from bringing a suit on his individual claim and prosecuting it to judgment (Booth v. Meyer et al., 14 N. B. R. 575); nor does the commencement of proceedings against one partner within four months after the issuing of an attachment against the firm dissolve the attachment. Where the attachment is issued more than four months before the commencement of proceedings in bankruptcy, the proceedings for a judgment *in rem* will not be stayed. (Mason et al. v. Warthen et al., 14 N. B. R. 846.)

Where goods are obtained through a misrepresentation by a firm composed of three members, a return of the goods or their proceeds to the creditor will be valid, as against the assignee of two of the debtors, if the goods have not lost their identity, so as to form a part of the property of the bankrupts. (Montgomery, Ass., v. Bucyrus Machine Works, 14 N. B. R. 198; 92 U. S. 257.)

*g.* The court may permit the proof of the claim of the partnership estate against the individual estates, and *vice versa*, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

*h.* In the event of one or more but not all of the mem-

bers of a partnership, being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

The liability of a person who is a co-debtor with, guarantor, or in any manner surety for a bankrupt, is altered by the discharge of such bankrupt. (Sec. 16.)

**Sec. 6. Exemptions of bankrupts.**—*a.* This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

[Act of 1867. SEC. 14. . . . That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessities of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and that of his wife and children, and the uniform, arms and equipments of any person who is or has been a soldier in the militia, or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such State exemption laws in force in the year eighteen hundred and sixty-four: *Provided*, That the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees; and in no case shall the property hereby excepted pass to

the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the termination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court.]

The bankrupt should file in triplicate, with the schedule of his property, a claim for such exemptions as he may be entitled to, one copy to be for the clerk, one for the referee, and one for the trustee (sec. 7—8); and the trustee is required to set apart such exemptions and report the items and estimated value thereof to the court as soon as practicable after his appointment (sec. 47—11), which is authorized to determine all such claims. (Sec. 2—11.)

The trustee is, by operation of law, vested with the title of the bankrupt's property, as of the date of the adjudication, except as to such which is exempt (sec. 70a), all of which, however, must be appraised by three disinterested appraisers and report thereof made to the court. (Sec. 70b.)

As this act does not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws, the exemption laws of all the states and territories are set forth at length under Title IV.

**Constitutionality.**—The fact that the constitution intrusts the "subject" of bankruptcies to Congress carries with it the power of defining what, and how much, of a debtor's property shall be exempt from the claims of his creditors. (In re Reiman et al., 18 N. B. R. 128; 12 Blatchf. 563; Fed. Cas. 11675.) And it may pass exemption laws which impair the obligation of contracts. (In re Owens, 12 N. B. R. 518; 6 Biss. 432; 7 Chi. Leg. News, 871; 1 N. Y. Wkly. Dig. 175.) A provision in a bankrupt act which allows the exemptions given by the state laws (whether they are valid or not) is constitutional. (In re Smith, 14 N. B. R. 395; 9 Woods, 458; 2 N. Y. Wkly. Dig. 532; 8 Chi. Leg. News, 315; 3 Cent. Law J. 386; 3 Amer. Law T. Rep. (N. S.) 335; Fed. Cas. 12996; In re Smith, 8 N. B. R. 401; 6 Chi. Leg. News, 83; Fed. Cas. 12986; In re Kean et al., 8 N. B. R. 367; 2 Amer. Law Rec. 290; Fed. Cas. 7630.) But it does not make valid a state exemption law held unconstitutional by the supreme court of such state. (Bush v. Lester et al., 15 N. B. R. 36.) The word "uniform" in the constitution refers only to uniformity in administration. (In re Jordan, 8 N. B. R. 180; 5 Leg. Op. 169; 30 Leg. Int. 296; Fed. Cas. 7514.) Laws exempting reasonable portions of the debtor's property from execution and sale properly relate to the remedy, and are therefore not liable to a constitutional objection. (In re Owens, 12 N. B. R. 518; 6 Biss. 432; 7 Chi. Leg. News, 871; 1 N. Y. Wkly. Dig. 175; Fed. Cas. 10632.)

**Title.**—The question of title is chiefly important as determining in what tribunal a bankrupt or a trustee may sue or be sued. Where a promissory note was assigned to a bankrupt as part of his exemption, it was held that, the title to said note being in him, he could bring suit

upon it. (*Henry v. Lanier*, 15 N. B. R. 280.) In like manner it has been held that a bankrupt law does not directly or indirectly transfer any part of a bankrupt's exempt property to his family, but leaves him full control over it. (*Farmer v. Taylor et al.*, 15 N. B. R. 515.) Where a homestead, which was the only property the bankrupt had, was set apart to him as exempt, the court held that the title did not pass to the assignee in bankruptcy, and the creditor must pursue his remedy in the state courts. (*In re Bass*, 15 N. B. R. 453; 3 Woods, 382; 9 Chi. Leg. News, 303; Fed. Cas. 1091.) While the Bankrupt Act adopts the local exemption laws as to amount, it does not recognize restrictions upon the debtor in his power to convey the exempt property. Thus, a conveyance of such exempt property would be upheld, notwithstanding the local exemption law restricted such after-conveyance. (*Farmer v. Taylor et al.*, 15 N. B. R. 515.) Where a bankrupt sought to compel the assignee to set apart real estate as a homestead, and also for an injunction to restrain a creditor from having said property sold under an execution on judgment, the relief was refused, on the ground that, if the property was a homestead, the title was unaffected by the Bankrupt Act, and if wrongfully seized in execution, it should be defended before the state court. (*In re Hunt*, 5 N. B. R. 493; 4 Chi. Leg. News, 5; 2 Pac. Law Rep. 146; Fed. Cas. 6883.) Where a member of a bankrupt firm owned a lot of ground upon which a house was built with the firm's funds, which were charged to the house, the firm then being indebted to said member in an amount in excess of cost of house, the court held that the house was part of the realty and therefore said member's separate property; that the firm had no ownership therein, and by reason of its debt no claim for reimbursement; and that only the excess over the amount allowed by exemption passed to the assignee. (*In re Parks et al.*, 9 N. B. R. 270; Fed. Cas. 10765.) Where funds are deposited in trust, the income to be applied to the support of a bankrupt and his wife, and for the maintenance and education of their children, said income and principle being inalienable by the grantees under the terms of the grant, and not subject to their debts or control, such income will not pass to an assignee, nor will the court decree an aliquot part thereof to said assignee. (*Durant, Ass., v. Insurance Co.*, 16 N. B. R. 324; Fed. Cas. 4188.)

**Exemptions in general.**—It is the duty of the court to see that the bankrupt's exempt property is secured to him. (*In re Stevens*, 5 N. B. R. 298; 2 Biss. 373; 10 Amer. Law Reg. (N. S.) 523; Fed. Cas. 13392.) The right of exemption, if it exists at all, must exist at the date of the institution of bankruptcy proceedings. (*In re Duerson*, 13 N. B. R. 183; Fed. Cas. 4117.) While adopting the exemption laws of a state as part of the Bankrupt Law, Congress cannot dispense with any of the limitations which that law imposes. (Id.) And to be entitled to its benefits a bankrupt must comply with its requirements. (*In re Jackson et al.*, 2 N. B.

R. 158; Fed. Cas. 7127.) If a bankrupt fails to select exemptions before his estate is sold, he thereby loses his rights thereto. (In re Solomon, 10 N. B. R. 9; 8 Amer. Law Rec. 226; 1 Amer. Law T. Rep. (N. S.) 351; Fed. Cas. 13166.) Application for exemption can only be made before the bankrupt's discharge; and a discharged bankrupt cannot be re-admitted to petition for an additional exemption granted after his discharge. (In re Kean et al., 8 N. B. R. 367; 2 Amer. Law Rec. 230; Fed. Cas. 7630.) A bankrupt may select such property as he desires to have exempted, and, unless for cause, it will be set apart accordingly. (In re Solomon, 10 N. B. R. 9; 8 Amer. Law Rec. 226; 1 Amer. Law T. Rep. (N. S.) 351; Fed. Cas. 13166.) He is entitled to the exemptions allowed by the law of his domicile, even if such exemptions have been increased subsequently to the recovery of judgments against him. (In re Smith, 8 N. B. R. 401; 6 Chi. Leg. News, 23; Fed. Cas. 12986.)

An assignee bears no relation to a bankrupt, except to set apart his exemptions; otherwise he is the agent of the law for the benefit of creditors. (Aiken v. Edrington, Sr., et al., 15 N. B. R. 271; Fed. Cas. 111.)

**Homestead — General.**— Real estate will only be set apart as exempt where the sale of other real estate will not be injuriously affected or the interests of creditors adversely affected thereby. (In re Edwards, 2 N. B. R. 109; Fed. Cas. 4293.) The right to a homestead exemption is not given by the Bankrupt Act, unless such right exists under state law (In re Kerr & Roach, 9 N. B. R. 566; Fed. Cas. 7729); but when allotted under such a law, and there is no fraud or other irregularity, a re-assessment will not be ordered for mere excess of value. (In re Hall, 9 N. B. R. 366; 2 Hughes, 411; Fed. Cas. 5921.) Where a state court sets apart a homestead, from which judgment an appeal is pending, the local statute providing that such appeals suspend but do not vacate such judgments, courts of bankruptcy will respect such homestead right though suspended, and will direct assignee to make himself party to such suit, and there determine the right to possession. (In re Mosely, Wells & Co., 8 N. B. R. 208; Fed. Cas. 9868.) A bankrupt cannot claim a homestead exemption in bankruptcy proceedings, under provisions of a state law, without complying with the provisions of such law. (In re Farish, 2 N. B. R. 62; Fed. Cas. 4647.) A bankrupt is entitled to homestead exemption, even where his wife owns a separate estate, provided her property is not occupied as a homestead by the family. (In re Tonne, 13 N. B. R. 170; 1 N. Y. Wkly. Dig. 170; Fed. Cas. 14095.)

Where an illiterate bankrupt misdescribed the land which he claimed as a homestead in his schedule, and the property was sold by the assignee, and an action of ejectment was brought by the purchaser, the court held that the application to have the error corrected should have been made to the bankrupt court. (Steele v. Moody, 16 N. B. R. 553.) Where the debtor, prior to bankruptcy, disposed of a homestead exempt under state laws, and which would be protected by the law if in his pos-

session, it was held that he could not invoke the protection of the Bankrupt Act in favor of his vendee. (*In re Everitt*, 9 N. B. R. 90; Fed. Cas. 4579.) If an execution has been wrongfully issued against the exempted property of a bankrupt he has the same rights before the state courts as any other person whom it is sought to deprive of a homestead. (*In re Everitt*, 9 N. B. R. 90; Fed. Cas. 4579.) The right of a wife and children to a homestead provision out of the property of a bankrupt is not such a lien as follows it into the hands of a third person acquiring title before any application is made to the state court to set the same apart, and if the bankruptcy occurs before homestead is set apart, the right of the wife is a matter for the adjudication of the bankruptcy court. (*Lumpkin et al. v. Eason*, 10 N. B. R. 549.) Under state law (Missouri), an estate for years is a proper subject of exemption, and when sold by the assignee he will be required to pay over the amount of the exemption to the bankrupt if it sells for more than that amount. (*In re Beckerford*, 4 N. B. R. 59; 10 Amer. Law Reg. (N. S.) 57; 4 Amer. Law T. 14; 1 Amer. Law T. Rep. Bankr. 241; Fed. Cas. 1209.) Where an action is brought for the purchase price of land as a homestead, a discharge in bankruptcy may be pleaded in bar. (*Hoskins v. Wall*, 17 N. B. R. 314.) Under state law (Illinois), a judgment is a lien on the excess in value beyond the sum fixed as an exemption. (*Haworth v. Travis et al.*, 13 N. B. R. 145.) The fact that land has been set apart in a bankruptcy proceeding as an exemption is not sufficient to enable the debtor to claim the exemption under state homestead laws. (*Darsey v. Mumpford*, 17 N. B. R. 181.)

The right to a homestead exemption is not lost by delaying to assert the same until assignee has made application for order to sell. (*Bartholomew, Ass. v. West et al.*, 8 N. B. R. 12; 7 West. Jur. 441; Fed. Cas. 1071.) But where a bankrupt neglects to claim a homestead exemption in his schedule, he is deemed to have waived it. (*Steele v. Moody*, 16 N. B. R. 558.) A householder entitled to a homestead exemption does not forfeit his right thereto by absence from home on account of ill-health. (*Bailey, Ass. v. Comings*, 16 N. B. R. 332; 4 Law & Eq. 684; 10 Chi. Leg. News, 49; 25 Pittsb. Leg. J. 51; Fed. Cas. 733.)

**Head of family.**—An unmarried bankrupt, whose domestic affairs were in charge of a sister, who receives no pay for her services and pays no board, but considers her brother's home her home, is the head of a family, and entitled as such to a homestead exemption. (*Id.*) An unmarried man is not the head of a family, within the meaning of homestead laws, who has a household under his supervision, with minor children, awarded him as apprentices by orphans' court. (*In re Summers*, 3 N. B. R. 21; Fed. Cas. 13604.) But such a man residing in a house of which he is proprietor, and which has no other inmates than hired servants or persons living on his bounty, is the head of a family, and as such entitled to a homestead exemption; but he is not entitled to additional allowance for inmates for whose maintenance he is legally bound. (*In re Taylor*, 3 N. B. R. 38; Fed. Cas. 13775.)

**Exemptions allowed.**—Where one purchased a tract of land a short distance from a town and occupied it as his homestead, and the town was afterwards extended so as to include his property, which was divided by streets and alleys, the court decided that he was entitled to a rural homestead and the extension of the city did not affect it. (In re Young, 15 N. B. R. 205; 1 Tex. Law J. 7; Fed. Cas. 18149.) A bankrupt who has mortgaged the only real estate he owns may claim a homestead exemption out of land so mortgaged. (In re Brown, 8 N. B. R. 60; 2 Amer. Law T. 122; 1 Chi. Leg. News, 409; Fed. Cas. 1980.) Under state law (Kentucky), a bankrupt is not entitled to an exemption of an undivided interest in land on which there are no improvements, although he has expressed an intention to make it a homestead. (In re Duerson, 13 N. B. R. 183; Fed. Cas. 4117.) Where a farm, subject to a mortgage, was sold free of homestead rights with consent of bankrupt, the court held that he was entitled to homestead of full value in the equity of redemption, and was paid out of the avails of the sale. (In re Beede, 19 N. B. R. 68; 26 Pittsb. Leg. J. 172; Fed. Cas. 1226.) A husband has the right to invest value of a homestead in premises to which others hold the legal title, or into an undivided part interest in land; but where a bankrupt and his wife built a house on land bargained for by her and paid for in part from her separate means, and for which she afterwards paid the balance and took a deed, the assignee was held to be entitled to a conveyance of the husband's interest, less the amount he was authorized by law to invest in a homestead. (Johnson, Ass. v. May et al., 16 N. B. R. 426; Fed. Cas. 7897.) Where a conveyance, fraudulent as to creditors, is set aside by a bankrupt court, at the instance of the assignee, the parties are restored to the state they occupied prior to such conveyance, and a bankrupt is entitled to his homestead exemption, and is not estopped by said fraudulent conveyance. (In re Detert, 11 N. B. R. 298; 7 Chi. Leg. News, 180; 14 Amer. Law Reg. (N. S.) 166; Fed. Cas. 8829; Cox v. Wilder et al., 7 N. B. R. 241; 2 Dill. 45; 5 Amer. Law J. Rep. (U. S. Cts.) 500; Fed. Cas. 8308; Penny v. Taylor, 10 N. B. R. 200; Fed. Cas. 10957; McFarland v. Goodman et al., 11 N. B. R. 134; 6 Biss. 111; 13 Amer. Law Reg. (N. S.) 697; Fed. Cas. 8789; Bartholomew, Ass. v. West et al., 8 N. B. R. 12; 7 West. Jur. 441; Fed. Cas. 1071; Smith v. Kehr, 7 N. B. R. 97; 2 Dill. 50; 6 West. Jur. 451; Fed. Cas. 18071.)

**Exemptions disallowed.**—A member of a firm of debtors appropriated money of the firm for the purchase of a homestead and claimed it as exempt; the claim was disallowed; he then mortgaged the premises, his wife joining; the assignee demanded the surrender of the land and release of the mortgage; the bankrupt alleged his wife's refusal to give up the property; the court held that the wife acquired no interest in the property, it having been purchased in fraud of creditors. (In re Boothroyd, 15 N. B. R. 368; 2 Cent. Law Bul. 189; Fed. Cas. 1653.) A merchant who, two weeks before his bankruptcy, sells his home for cash,

and moves with his family into his store, cannot claim the latter as a homestead exemption. (In re Wright, 8 N. B. R. 430; Fed. Cas. 18067.) Nor can a bankrupt claim as exempt a business block owned by him, and in which were two stores, one of which he occupied for business purposes, and into the other of which, shortly before his bankruptcy, he moved his family and resided. (In re Lammer, 14 N. B. R. 460; 7 Biss. 269; 8 Chi. Leg. News, 386; 3 Cent. Law J. 574; Fed. Cas. 8031.) Nor is he entitled to a homestead out of lands mortgaged at the time of purchase to secure the unpaid purchase-money. (In re Whitehead, 2 N. B. R. 180; 1 Chi. Leg. News, 326; Fed. Cas. 17562.) The *cestui que trust* under a trust deed to secure present loans and subsequent advances will be protected as to such advances against the claims of the borrower, who has declared the land a homestead, and has subsequently obtained such advances, and fraudulently concealed his declaration of homestead. (In re Haake, 7 N. B. R. 61; 2 Sawy. 231; Fed. Cas. 5883.)

**Waiver.**—Under state law (Virginia), a debtor may by contract bind himself to waive the homestead exemption allowed him by law in favor of a particular debt, and the courts will enforce such waiver. Such waiver does not confer upon his general creditors any special rights, nor operate in his favor, and where the assignee does not claim under the mortgage it is precisely as if bankrupt had never made such waiver, and he is entitled to have his homestead set apart. (In re Poleman, 9 N. B. R. 376; 5 Biss. 526; 19 Int. Rev. Rec. 94; 6 Chi. Leg. News, 181; Fed. Cas. 11247.) A bankrupt mortgaged his exempt property, waiving all homestead and exemption rights and his right to a discharge in bankruptcy; the property was left by the assignee in the debtor's possession temporarily; afterwards the mortgage was foreclosed and the property levied on; the assignee never had actual possession of the property, but it was included in the schedule; the court held the levy to be a contempt, as the waiver could not be enforced until the property was allotted to the bankrupt. (Byrd, Ass., v. Harold et al., 18 N. B. R. 433; 26 Pittsb. Leg. J. 315; Fed. Cas. 2269.)

**Personalty.**—No allowance will be made to a bankrupt, from the general fund, of money in lieu of articles seized and sold under distress for rent which would otherwise have been exempt. (In re Lawson, 2 N. B. R. 19; Fed. Cas. 8149.) An insolvent debtor purchased a wagon, team and harness with wheat for the express purpose of claiming the property as exempt; but the transaction was held to be void and the title to the wheat passed to the assignee. (In re Parker et al., 18 N. B. R. 43; Fed. Cas. 10724.) A bankrupt had an expectant interest in an estate of less than the exemption amount; the court held that he was entitled to hold such interest exempt. (In re Bennett, In re Erhen, 2 N. B. R. 66; 8 Amer. Law Reg. (N. S.) 31; 6 Phila. 472; 25 Leg. Int. 316; 1 Chi. Leg. News, 22; Fed. Cas. 1315.) Whether the circumstances of the bankrupt require the setting apart of "necessaries" is a question for the assignee to de-



termine, subject to the approval of the court. (In re Hay et al., 7 N. B. R. 344; 2 Lowell, 180; Fed. Cas. 6253.) A plain and not extravagantly costly watch is properly allowable to a commercial man as a necessary article (In re Steele, 19 N. B. R. 41; 8 Cent. Law T. 86; Fed. Cas. 18346); but tools and implements were not allowed a merchant, although he is entitled to a horse under a provision exempting "working animals." (In re Peabody, 16 N. B. R. 243; 9 Chi. Leg. News, 243; Fed. Cas. 10866; In re Schwartz, 4 N. B. R. 189; Fed. Cas. 12503.) Real estate will not be set apart to cover a deficiency in the value of articles and necessities. (In re Thornton, 2 N. B. R. 68; 8 Amer. Law Reg. (U. S.) 42; Fed. Cas. 18994.) Nor money as an exemption, except when it is the proceeds of articles which ought to be set aside under the head of "other articles and necessities of the bankrupt." (In re Welch, 5 N. B. R. 348; 5 Ben. 390; Fed. Cas. 17366.) Unless a bankrupt personally follows some trade, occupation or profession which necessitates the ownership of a wagon and team, and earns his living by such trade, etc., he is not entitled to such property as exempt under the law. (In re Parker et al., 18 N. B. R. 43; Fed. Cas. 10724.) A bankrupt who executed a mortgage two days before his adjudication was permitted to retain sufficient for the support of himself and family, not exceeding with his other exemptions the total amount of exemptions allowable. (In re Thompson, 13 N. B. R. 300; 2 N. Y. Weekly Dig. 4; Fed. Cas. 18938.)

**Liens.**—The allotment of an exemption by an assignee in bankruptcy does not impair the lien of a judgment (Haworth v. Travis et al., 13 N. B. R. 145); and the assignee is not obliged to designate articles on which are no liens. (In re Preston, 6 N. B. R. 545; Fed. Cas. 11394.) A creditor whose lien overrides the exemption of the state law may enforce such lien without asserting his rights in a bankruptcy court. (Bush v. Lester et al., 15 N. B. R. 36.) When land has been set apart by the assignee as exempt, against which there is a vendor's lien, said land may be sold for the satisfaction of said lien. (In re Perdue, 2 N. B. R. 67; 2 West. Jur. 279; Fed. Cas. 10975.) A judgment will not be entered satisfied of record, upon the production of a discharge, unless the judgment is one which a discharge will release; an attachment upon exempt property is not dissolved, but may be enforced after bankruptcy. (Robinson et al. v. Wilson, 14 N. B. R. 565.) A mortgage creditor who does not prove his debt may enforce his mortgage in a state court, although the property be duly set apart as exempt. (Cumming v. Clegg, 14 N. B. R. 49.) The *cestui que trust*, under a trust deed to secure present loans and subsequent advances, will be protected against the claims of the borrower, who has declared the land a homestead, and has subsequently obtained such advances and fraudulently concealed his declaration of homestead. (In re Haake, 7 N. B. R. 61; 2 Sawy. 231; Fed. Cas. 5883.) A creditor, who is secured by a deed of trust on debtor's homestead, proved his claim in bankruptcy and asked for sale of the property; the property

was sold; purchaser petitioned for rule to show cause why he should not deliver possession; the court held that it had jurisdiction to compel the bankrupt to deliver possession. (In re Betts, 15 N. B. R. 536; 4 Dill. 93; 4 Cent. Law J. 558; Fed. Cas. 1871.) In granting an exemption the order must recite that it is to be without prejudice to a wife's right to alimony, decreed by a state court prior to bankruptcy. (In re Garrett, 11 N. B. R. 493; 2 Hughes, 235; Fed. Cas. 5252.) A bankrupt is entitled to hold as exempt his household furniture and other necessary articles, even though they are taken under an execution prior in time to the beginning of bankruptcy proceedings (In re Martin, 13 N. B. R. 397; 2 Hughes, 418; Fed. Cas. 9152; In re Owens, 12 N. B. R. 518; 6 Biss. 432; 7 Chi. Leg. News, 371; 1 N. Y. Wkly. Dig. 175; Fed. Cas. 10632; In re Ellis, 1 N. B. R. 154; Fed. Cas. 4400); nor can they be sold after he has filed petition in bankruptcy to satisfy a prior levy thereon. (In re Griffin, 2 N. B. R. 85; 2 Amer. Law T. Rep. Bankr. 23; 1 Chi. Leg. News, 103; Fed. Cas. 5813.)

**Partnership.**—The adjudication of bankruptcy of a partnership dissolves the firm, and, as there is then no firm in existence to receive exemptions, none can be set apart to the bankrupts as a firm. (In re Blodgett & Sanford, 10 N. B. R. 145; Fed. Cas. 1555.) Where there is no fraudulent intention, partners may dissolve the partnership or sever their interest in the property, or one partner sell his interest to the other, and the continuing partner may have his exemption the same as if no partnership had existed. (In re Bjornstad, 18 N. B. R. 282.) On the eve of bankruptcy a firm sold firm property and divided the proceeds; one member bought with his share property which was exempt under the state law; the firm tried to compromise; such property was held not to be exempt. (In re Melvin et al., 17 N. B. R. 543; Fed. Cas. 9406.)

**Individual exemptions out of partnership assets.**—Under the act of 1867, the practice upon this point was far from uniform. Some decisions were to the effect that, where the individual assets were not sufficient to furnish the exemption allowed under the law, or where there were no such individual assets, the partners were each entitled to the legal exemption out of the partnership assets. (In re Young, 3 N. B. R. 111; Fed. Cas. 18148; In re Rupp, 4 N. B. R. 25; Fed. Cas. 12141; In re McKercher et al., 8 N. B. R. 409; In re Richardson & Co., 11 N. B. R. 114; 7 Chi. Leg. News, 62; Fed. Cas. 11776.) One case decided that only the surplus, after paying all the partnership debts and the expenses, was subject to individual exemption (In re Price, 6 N. B. R. 400; 1 Md. Law Rec. 236; Fed. Cas. 11410), and another that individual members of a firm could have no separate exemption out of undivided partnership property. (In re Blodgett et al., 10 N. B. R. 145; Fed. Cas. 1555.) But a large majority of the cases, and among them many of the later cases, have decided that the individual member is not entitled to any exemption out of partnership property. (In re Hafer et al., 1 N. B. R. 147; 25

Leg. Int. 148; 15 Pittsb. Leg. J. 389; Fed. Cas. 5896; In re Handlin et al., 12 N. B. R. 49; 3 Dill. 290; 2 Cent. Law J. 264; Fed. Cas. 6018; In re Tonne, 13 N. B. R. 170; 1 N. Y. Wkly. Dig. 170; Fed. Cas. 14095; In re Boothroyd et al., 14 N. B. R. 223; Fed. Cas. 1652; In re Hughes et al., 16 N. B. R. 464; 8 Biss. 107; Fed. Cas. 6842; In re Croft Brothers, 17 N. B. R. 324; 6 N. Y. Wkly. Dig. 218; 8 Biss. 186; 10 Chi. Leg. News, 204; 6 Amer. Law Rep. 597; Fed. Cas. 3404.) The last case cited seems to strike the key-note of these decisions when it says that partnership assets are a trust fund for the payment of the creditors of the firm, and therefore no exemption will be allowed until all the partnership debts are paid. Following are two special cases: Where partners purchase lots, taking title in the firm name, with an understanding that each should own in severalty the lot on which he builds, the interest of each is sufficient to entitle him to a homestead exemption. (Bartholomew, Ass. v. West et al., 8 N. B. R. 12; 7 West. Jur. 441; Fed. Cas. 1071.) A firm and one member thereof individually were adjudged bankrupts; the individual member claimed exemption out of partnership assets; the claim was not allowed. (In re Stewart & Newton, 18 N. B. R. 295; 2 N. Y. Wkly. Dig. 3; Fed. Cas. 13420.)

**Sec. 7. Duties of bankrupts.**—*a.* The bankrupt shall (1)<sup>1</sup> attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2)<sup>2</sup> comply with all lawful orders of the court; (3)<sup>3</sup> examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt,

<sup>1</sup> At the first meeting of the creditors, the judge or referee shall preside and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor, but the place of such meeting should be one most convenient for parties in interest. The first meeting must be held not less than ten nor more than thirty days after the adjudication. (Sec. 55, *a.*)

<sup>2</sup> In case of contempt committed before a referee, he certifies the facts to the judge, and after a hearing the latter is authorized to impose punishment. (Sec. 41.) Courts of bankruptcy may enforce obedience by bankrupts and other persons to all lawful orders by fine or imprisonment, or both. (Sec. 2—13.)

<sup>3</sup> Should the bankrupt, while such, or after his discharge, conceal from the trustee any of the property belonging to his estate in bankruptcy, he is liable to imprisonment. (Sec. 29, *b.*)

by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge; (7)<sup>1</sup> in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8)<sup>2</sup> prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amount due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9)<sup>3</sup> when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony

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<sup>1</sup> Any person presenting, under oath, a false claim for proof against the estate of a bankrupt, or using any such claim in composition personally or by agent, is liable to imprisonment. (Sec. 29, *b*.)

<sup>2</sup> In the event the bankrupt fails to file the schedule of property and list of creditors required, the referee must do so (sec. 39—6); but if the debtor is notified to furnish the schedule and fails, the creditor may apply for an attachment against him. (Orders IX.) And any debt which was not duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had actual notice or knowledge of the proceedings, will not be affected by a discharge. (Sec. 17, *a*.) In case the schedule and list are defective, it is the duty of the referee to see that they are amended. (Sec. 39—2.)

<sup>3</sup> At the first meeting of the creditors, the bankrupt may be publicly examined at the instance of any of the creditors (sec. 55, *b*), but at least ten days' notice by mail must be given to creditors of all examinations. (Sec. 58, *a*.) A refusal to answer questions propounded is a contempt, and accordingly punishable. (Sec. 41.)

given by him shall be offered in evidence against him in any criminal proceeding.

*Provided, however,* That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

[Act of 1867. SEC. 11 makes provision for the schedule of property.

SEC. 14. . . . The debtor shall also, at the request of the assignee and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper to enable the assignee to possess himself fully of all the assets of the bankrupt.

SEC. 26. . . . and he shall execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated; and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of court. [Provision is here made for bankrupt's absence.] He shall also be at liberty, from time to time, upon oath to amend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown, the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. . . .

SEC. 42. . . . The order of adjudication of bankruptcy, shall require the bankrupt forthwith, or within such number of days, not exceeding five after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory of his estate in the form and verified in the manner required of a petitioning debtor by section thirteen.]

**Attendance of bankrupt at meetings.**—A bankrupt cannot be proceeded against for contempt when, owing to sickness, he is unable to attend a meeting as required by the register. (In re Carpenter, 1 N. B. R. 51; Fed. Cas. 2427.) Where, in proceedings against him, on the day of hearing he neither enters appearance nor denies by answer the allegations of the petition, he may be ordered to state in writing the number of his creditors and the amount due them, and a request for jury trial to determine the fact of bankruptcy and for leave to file an answer may be denied. (Clinton et al. v. Mayo, 12 N. B. R. 39; Fed. Cas. 2899.) The creditors are to decide on the sufficiency of the excuse for the debtor's absence from their meeting, and the court will not disturb such decision without good cause shown. (In re Wronkow et al., 18 N. B. R. 81; 26 Pittsb. Leg. T. 2; Fed. Cas. 18105.) He must appear in person or by representative at the creditors' meeting in composition, and submit the required statement, but is not bound to appear at the hearing to submit any statement. (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.) See also MEETINGS OF CREDITORS, sec. 55.

**Compliance with orders.**—The court may order a bankrupt to pay over the proceeds received from the sale of notes sold just previous to the serving of an injunction upon him (In re Mempner, 6 N. B. R. 521; Fed. Cas. 7689); and if it appears that he has not surrendered any portion of his property which he should have, he may be ordered to do so, and upon failure he may be punished for contempt. (In re Salkey et al., 11 N. B. R. 423; 6 Biss. 269; 7 Chi. Leg. News, 178; Fed. Cas. 12253.) He will not be permitted to pay money which he has collected and which belongs to the estate for interest on mortgages, unless it appear that such payment is for the benefit of the estate. (In re Ettinger, 18 N. B. R. 222; Fed. Cas. 4543.) Upon being adjudicated a voluntary bankrupt, he must surrender all the assets, notwithstanding there may be a prospect of settlement with the creditors. (In re Shafer et al., 2 N. B. R. 178; 1 Chi. Leg. News, 326; Fed. Cas. 12694.)

**The schedule.**—Unless there was a design to conceal the property, where it has been transferred, an omission to place it in the schedule is no ground for refusal of discharge. (In re Smith, 13 N. B. R. 256; 1 Woods, 478; Fed. Cas. 12995.) It has been held that the following should be included in the schedule: The interest of an individual member of a firm in a partnership (In re Brick, 19 N. B. R. 508); property conveyed in fraud of the creditors of grantor (In re O'Bannon, 2 N. B. R. 6; Fed. Cas. 10394); growing and ungathered crops, as personal property (In re Schumpert, 8 N. B. R. 415; Fed. Cas. 12491); a judgment in favor of a bankrupt. (In re Sallee, 2 N. B. R. 78; 2 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 12256.) The retention of possession of chattels by a vendor after the sale thereof is conclusive evidence of fraud as against creditors, and the failure to include such property in his schedule at the time of filing the petition in bankruptcy, or to otherwise dis-

close his interest therein, is concealment thereof, and ground for withholding discharge. (In re Hussman, 3 N. B. R. 140; 2 Amer. Law T. Rep. Bankr. 53; 1 Chi. Leg. News, 177; Fed. Cas. 6951.)

A bankrupt who has not made a complete disclosure of his assets cannot require that creditors opposing the discharge specify objections, or abide by specifications which they may have filed. (In re Long, 3 N. B. R. 66; 7 Phila. 578; 26 Leg. Int. 849; Fed. Cas. 8477.) Where real estate held by partners as tenants in common is classified in the schedule as partnership assets, such classification will not convert the separate property of the individual partners into firm property in derogation of the rights of separate creditors. (In re Zug, 16 N. B. R. 280; 23 Int. Rev. Rec. 892; 34 Leg. Int. 402; 25 Pittsb. Leg. J. 29; Fed. Cas. 18222.) The refusal or neglect of an involuntary bankrupt to pay to the assignee a sum returned in his inventory as "cash on hand" constitutes contempt. (In re Dresser, 3 N. B. R. 138; Fed. Cas. 4077.) Where a bankrupt has failed to put property in his schedule, the right of the assignee to recover it is not barred by discharge granted before discovery. (Maybin v. Raymond, Ass., 15 N. B. R. 358; 4 Amer. Law T. Rep. (N. S.) 21; Fed. Cas. 9338.)

The wilful and fraudulent omission by a bankrupt from his inventory of a portion of his assets may be cause for prosecution, but it is not an infamous crime as the term is used at common law and in the fifth amendment to the constitution. (United States v. Block, 15 N. B. R. 325; 4 Sawy. 211; 9 Chi. Leg. News, 234; Fed. Cas. 14609.) Where it appeared that after a conveyance of property, and before the filing of the petition in bankruptcy, a receiver had been appointed by the state court, it was held that whatever title the bankrupt had in the property, after the conveyance, had vested in the receiver, and there was no false swearing by reason of its not having been inserted in the schedule. (In re Freeman, 4 N. B. R. 17; Fed. Cas. 5082.) It has been held that the following need not be included in the schedule: The gift by a bankrupt to his wife, before adjudication and not in contemplation of insolvency, of funds which were used in improving the separate estate of the wife, and which does not vest in him such an interest as would pass to his assignee (In re Wyatt, 3 N. B. R. 84; 1 Chi. Leg. News, 107; Fed. Cas. 18106); where a husband's equitable interest in the wife's estate has been levied upon and sold under execution (In re Hummitah, 2 N. B. R. 3; In re Pomeroy, *ibid.*; 15 Pittsb. Leg. J. (O. S.) 494; Fed. Cas. 6866); the right of a bankrupt to one-half of the net profits of business of another conducted in his own name. (In re Beardsley, 1 N. B. R. 121; 1 Amer. Law T. Rep. Bankr. 94; Fed. Cas. 1184.)

**Amendment of the schedule.**—A register has power to allow a bankrupt to amend his schedule on his *ex parte* application without notice, and no creditor has a right to oppose such application. (In re Watts, 3 N. B. R. 145; 8 Ben. 166; 2 Amer. Law T. Rep. Bankr. 74; Fed. Cas. 17293.)

Material mistakes, as the entire omission of a debt or the name of a creditor, may be corrected. (*Beebe v. Pyle*, 18 N. B. R. 162; *In re Heller*, 5 N. B. R. 46; 41 How. Pr. 218; Fed. Cas. 6339.) Amendment of the schedule will be permitted where the debtor had been adjudicated a bankrupt and the warrant issued for the first meeting of creditors, and it is shown by affidavits that the names of certain creditors had been omitted; but the marshal will be required to issue a new warrant. (*In re Perry*, 1 N. B. R. 2; 1 Amer. Law T. Rep. Bankr. 4; Fed. Cas. 10998.) Material additions to the schedule of debts or of property are not allowable by way of amendment after the first meeting of creditors, except upon such conditions as may prevent injustice. In case of amendment the issuing of an *alias* warrant will be required. (*In re Ratcliffe*, 1 N. B. R. 98; 25 Leg. Int. 92; 6 Phila. 466; 1 Amer. Law T. Rep. Bankr. 47; 15 Pittsb. Leg. J. 343; Fed. Cas. 11578.) The register has power to allow an amendment of his schedule by the bankrupt to include additional property, but creditors are not thereby precluded from opposing the discharge on the ground of such omission. (*In re Watts*, 2 N. B. R. 145; 3 Ben. 166; 2 Amer. Law T. Rep. Bankr. 74; Fed. Cas. 17293.) Where a bankrupt sought to amend his schedule by adding twenty other debts, the court held that there had been culpable laxity, and refused to allow the amendment except upon such terms, to be reported by the register, as would prevent injustice to creditors. (*In re Morgenthal*, 1 N. B. R. 98; 28 Leg. Int. 92; 6 Phila. 468; Fed. Cas. 9813.) A bankrupt may, even after consideration of specifications in opposition to discharge, amend his schedule, by order of the court. (*In re Preston*, 3 N. B. R. 27; Fed. Cas. 11392.) A discharge will not be granted when the bankrupt has omitted from his schedule of assets an estate in expectancy under a will, but leave will be granted to amend. (*In re Connell, Jr.*, 3 N. B. R. 113; Fed. Cas. 3110.)

**False swearing in the schedule.**—It must appear that the bankrupt knew the claim was false in order to bar a discharge on the ground that he swore falsely in the affidavit accompanying his schedule that he was indebted to the creditors named therein, or that he did not disclose to the assignee that the claim was false and fictitious. (*In re Blumen-thal*, 18 N. B. R. 555; Fed. Cas. 1576.) If a bankrupt put into his schedule, as due, a debt which is false, it will prevent his obtaining a discharge, even though the debt be not proved. In such case the *onus probandi* is on such creditors to show that the debt was false, and where there is a failure to substantiate the allegation a discharge will be granted. (*In re Orcutt*, 4 N. B. R. 176; Fed. Cas. 10550.) If, by wilfully making a false schedule or affidavits, the bankrupt prevents notice to a creditor, his discharge may be annulled. (*Rayl, Adm'x, v. Lapham*, 15 N. B. R. 508; *In re Herrick*, 7 N. B. R. 341; Fed. Cas. 6419.) Where a creditor wishes to avoid the discharge on the ground that his claim was not included in the bankrupt's schedule, he must attack the discharge on the



ground of fraud, in the court where granted. (*Symonds v. Barnes*, 6 N. B. R. 877.)

**Omission of creditors from the schedule.**—The omission of names of creditors in the schedule of a bankrupt with their knowledge and consent is not ground for withholding a discharge (*In re Needham*, 2 N. B. R. 124; 1 *Lowell*, 309; 2 *Amer. Law T. Rep. Bankr.* 89; 16 *Pittsb. Leg. J.* 313; 1 *Chi. Leg. News*, 171; *Fed. Cas.* 10081); and the mere omission is not a substantive ground for avoiding or preventing the discharge of such creditor unless the omission be wilful or fraudulent. (*Payne & Bro. v. Able et al.*, 4 N. B. R. 67.) When it appears at the first meeting of creditors that the names of certain creditors by whom claims against the estate are presented do not appear on the schedule, the proof of such claims should be postponed until after the election of the assignee. (*In re Milwain*, 12 N. B. R. 358; 1 *N. Y. Weekly Dig.* 76; *Fed. Cas.* 9628.) It is the province of the court to pass on all questions of concealment of assets and failure to name all creditors. (*In re Scott, Collins & Co.*, 15 N. B. R. 73; 4 *Cent. Law J.* 29; *Fed. Cas.* 12519.) A discharge cannot be impeached collaterally on the ground that a creditor had no notice of the bankruptcy proceedings, and that notice was not given because of the fraud of the bankrupt in representing in his schedule that a creditor's residence was unknown to him, when he actually knew the same. (*Rayl, Adm'r, etc. v. Lapham*, 15 N. B. R. 508.) The correctness of the schedule of creditors, or the fact that a creditor received notice of the proceedings by creditors, does not determine the question of jurisdiction either of the proceedings or to grant a discharge. (*In re Archenbrow*, 11 N. B. R. 149; 7 *Chi. Leg. News*, 99; *Fed. Cas.* 504.) Creditors cannot recklessly file a petition for the purpose of making the alleged bankrupt file a statement of his creditors. (*In re Scammon*, 11 N. B. R. 280; 6 *Biss.* 195; 7 *Chi. Leg. News*, 42; 9 *West. Jur.* 175; *Fed. Cas.* 12429.)

**Claims to be included in the schedule.**—A debtor is required to file a list of his creditors and the amount of their respective claims. (*Warren Savings Bank v. Palmer & Co.*, 10 N. B. R. 239; 10 *Phila.* 286; 81 *Leg. Int.* 261; 6 *Chi. Leg. News*, 366; 21 *Pittsb. Leg. J.* 193; *Fed. Cas.* 17207.) The omission to place a claim upon the list of creditors is merely a circumstance of suspicion. (*In re Mendelsohn*, 12 N. B. R. 538; 8 *Sawy.* 342; *Fed. Cas.* 9420.) The existence of a difference between the list of creditors filed by the debtor and the list filed by petitioning creditors constitutes an issue to be tried and determined upon the evidence adduced. (*In re Hymes*, 10 N. B. R. 433; 7 *Ben.* 427; *Fed. Cas.* 6986.) Debtors should set down in the schedule all the papers that they may be liable on, with proper explanations in regard to them. (*In re Henry et al.*, 17 N. B. R. 463; 9 *Ben.* 449; *Fed. Cas.* 6370.) A debt due the wife should be embraced in the schedule. (*In re Rosenfeld*, 2 N. B. R. 49; 1 *Amer. Law T. Rep. Bankr.* 100; *Fed. Cas.* 12057.) The omission of a debt contracted

with the creditor in his individual capacity, and subsequent to the date of the partnership of the creditor, under which partnership name he claimed notice as a creditor, was held not to be fraudulent or wilful omission. (In re Pierson, 10 N. B. R. 107; Fed. Cas. 11153.) When all the members of a firm petition for the benefit of the act they are jointly and severally bound to make the required statements of their debts, whether copartnership or individual, or due by them jointly with other persons not parties to the petition. (In re Warren and Charles Leland, 5 N. B. R. 222; 5 Ben. 168; 4 Amer. Law T. 185; Fed. Cas. 8228.)

**The relation of the schedule to composition proceedings.**—In cases of composition the statement should conform to the schedule in bankruptcy. (In re Haskell, 11 N. B. R. 164; 1 Cent. Law J. 531; Fed. Cas. 6192.) A mistake without fraud, made by the debtor in his statement of the amount due to the creditor, will not vitiate a composition. (Ex parte Trafton, In re Trafton, 14 N. B. R. 507; 2 Lowell, 505; Fed. Cas. 14133; Beebe v. Pyle, 18 N. B. R. 162.) Where the facts relating thereto were brought out by the testimony and considered by the creditors in coming to the conclusion to accept the composition, it is not a good objection that property standing in the name of the bankrupt's wife should have been included in the schedules. (In re Welles, 18 N. B. R. 525; Fed. Cas. 17377.) Nor is the fact that the schedules stated the real estate of the debtor as of unknown or uncertain value a good objection to a composition. (In re Welles, 18 N. B. R. 525; Fed. Cas. 17377.)

**The effect upon a discharge of an omission from the schedule.**—A certificate of discharge in bankruptcy is not a bar to a suit against a bankrupt by a creditor who was not named in the schedule accompanying the petition in the bankruptcy proceedings. (Barnes v. Moore, 2 N. B. R. 174; Lamb, Ass., v. Brown, 12 N. B. R. 522; 7 Chi. Leg. News, 363; 1 N. Y. Weekly Dig. 176; Fed. Cas. 8011.)

**The effect of the insertion of the claim in the schedule.**—The filing of the petition by a bankrupt and his including the claim of a creditor in the schedule of debts is equivalent to a new promise, so as to prevent the claim, if not already barred, from being defeated by the statute of limitations. (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Weekly Dig. 243; Fed. Cas. 4331; In re Hertzog, 18 N. B. R. 526; Fed. Cas. 6423. For *contra*, see In re Kingsley, 1 N. B. R. 66; 1 Lowell, 216; 7 Amer. Law Reg. (N. S.) 423; 15 Pittsb. Leg. J. 235, 277; Fed. Cas. 7819.)

**The schedule in general.**—A deposition of a creditor setting forth a claim against a bankrupt for unliquidated damages for a breach of contract, which does not appear in the schedule, is not proof thereof, unless the amount is fixed by assessment, application for which must be made by the creditor. (In re Clough, 2 N. B. R. 59; 2 Ben. 508; 16 Pittsb. Leg. J. 25; Fed. Cas. 2905.) A creditor is not prejudiced by refusal of permission to take a copy of the schedule, so long as it was produced before

the register and made accessible to the creditor at all times, for the purpose of examining it or the bankrupt in respect to it. (In re Tift, 18 N. B. R. 237; Fed. Cas. 14033.) When but a single creditor proves his claim, he is entitled to be paid in full as far as the assets are sufficient for the purpose, and if there be any residue the same must be applied to the payment of such creditors as the bankrupt has acknowledged to hold valid claims. (In re Haynes, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 6369.) In an action brought under the Bankrupt Act, the schedule of indebtedness is not material evidence of insolvency. (Tyler, Asa, v. Brock et al., 17 N. B. R. 239.)

**Acts and duties of the bankrupts generally.**—If it appear, in the regular course of proceedings, that an applicant for discharge has failed in any particular to perform his duty as a bankrupt, the application for discharge will be refused. (In re Palmer, 14 N. B. R. 487; 2 Hughes, 177; Fed. Cas. 10678.) Where a bankrupt is indorser on a note which falls due after the adjudication of bankruptcy and before the appointment of an assignee, he may waive demand and notice. (Ex parte Tremont National Bank, In re Battey, 16 N. B. R. 397; 2 Lowell, 409; 25 Pittsb. Leg. J. 84; Fed. Cas. 14169.)

**Examination of bankrupts.** See *post*, p. 178.

**Sec. 8. Death or insanity of bankrupts.**—*a.* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided*, That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

[Act of 1867. Sec. 12. . . . If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.]

This is a deviation from the ordinary rule that death or insanity abates a suit, and, jurisdiction once obtained, permits the administration of an estate until closed.

**Effect of the death of the bankrupt.**—A proceeding in bankruptcy will not be discontinued by the death of the bankrupt between the time of entry of the order of adjudication and the physical "issuing of the warrant." (In re Litchfield, 9 N. B. R. 506; 7 Ben. 259; Fed. Cas. 8385.) The death of one partner prior to an adjudication on the question of bankruptcy is not legal cause for dismissing the petition. (Hunt, Tillinghast & Co. v. Pooke & Steere, 5 N. B. R. 161; Fed. Cas. 6896.) Where the bankrupt died five months after filing his petition and his attorney

asked for discharge on account of the death, it was held that the discharge could not be granted because the bankrupt had not taken the necessary oath prior to his decease. (In re Gunike, 4 N. B. R. 23; 2 Chi. Leg. News, 367; 1 Pac. Law Rep. No. 8, p. 3; Fed. Cas. 5868.) A brother of one adjudged a bankrupt who died before adjudication is not a partner in interest, and is not entitled to file a petition to obtain permission to dispose of the bankrupt's property. (Karr v. Whittaker et al., 5 N. B. R. 123; Fed. Cas. 7613.) Where the debtor appears and confesses the acts of bankruptcy charged in a creditor's petition, and a trustee is appointed, a creditor who has proved his debt cannot have set aside the adjudication after the death of the bankrupt and after the rights of third parties have intervened. (In re Thomas, 11 N. B. R. 330; 7 Chi. Leg. News, 187; Fed. Cas. 13891.)

**The effect of the insanity of the bankrupt.**—A person cannot commit an act of bankruptcy while insane, but if he becomes insane after committing the act he can be proceeded against in bankruptcy. (In re Pratt, 6 N. B. R. 276; 2 Lowell, 96; Fed. Cas. 11371.) A person who is under guardianship as a lunatic may be proceeded against in involuntary bankruptcy in opposition to the wishes of his guardian. If the person was insane at the time of the commission of the alleged act of bankruptcy he cannot be adjudicated a bankrupt for that act. (In re Weitzel, 14 N. B. R. 466; 7 Biss. 289; 3 Cent. Law J. 557; Fed. Cas. 17365.) An application to set aside the default and subsequent adjudication in bankruptcy will be granted, and the bankrupt will be allowed to show cause why he should not be so adjudged, when he files affidavits alleging that he was insane at the time the debts were created and also at the time of the proceedings against him and until a recent period, where it appears that the assignee has made no distribution. (In re Murphy, 10 N. B. R. 48; Fed. Cas. 9946.)

**The relation of the right of dower to bankruptcy.**—A valid conveyance may be made by the assignee of land held by the husband at the time of bankruptcy without reserving or providing for dower interest. (In re Kelly v. Strange, 2 N. B. R. 2; Fed. Cas. 7676.) Where the husband and wife join in a deed duly acknowledged so as to release the dower, if the deed be avoided in the hands of a fraudulent grantee as having been executed by the bankrupt with intent to hinder, delay and defraud creditors, the assignee in bankruptcy will be entitled to the land divested of the wife's claim of dower and the husband's right to a homestead. (Cox, Ass., v. Wilder et al., 5 N. B. R. 443; Fed. Cas. 3309.) But where a fraudulent conveyance has been set aside, the making of such conveyance does not forfeit the dower right of the wife against the assignee in bankruptcy. (Cox v. Wilder et al., 7 N. B. R. 241; 2 Dill. 45; 5 Amer. Law T. Rep. (U. S. Cts.) 500; Fed. Cas. 3303.) The dower interest of a wife claiming her dower in certain real estate belonging to the bankrupt and sold by the assignee in pursuance of an order of the court will not be divested by the sale. (Lazear v. Porter, Ass., 18 N. B.

R. 549; In re Angier, 4 N. B. R. 199; 1 Amer. Law T. Rep. Bankr. 248; Fed. Cas. 388.) It has been held that a *feme covert* does not become a surety for her husband by charging her inchoate right of dower for her husband's benefit; that she is not entitled to dower in real estate held as partnership assets; and an agreement that she be compensated for a lease of her contingent right of dower is not to be implied. (Hiscock Ass., etc. v. Jaycox & Green, 12 N. B. R. 507; Fed. Cas. 6531.) The wife's right of dower, where she joins in the mortgage of her husband's property, can be barred only by sale of such property under a power of sale contained in the mortgage or by a decree of a court of competent jurisdiction, where she can be made the party to the proceedings, a sale in bankruptcy proceedings being ineffectual for the purpose. (In re Bartenbach, 11 N. B. R. 61; 2 Amer. Law T. Rep. (N. S.) 83; Fed. Cas. 1068.)

**Sec. 9. Protection and detention of bankrupts.—a.** A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

[Act of 1867. SEC. 26. . . . No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.]

The term "bankrupt" includes a person against whom an involuntary petition or an application to set aside or revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt (sec. 1—4); hence this right of exemption from arrest may exist where there is no adjudication of bankruptcy, and where there may never be, the filing of the petition fixing the time when the exemption commences to run. The referee may furnish a protection against arrest (Orders XII), and in the event the debtor is under arrest, he may be released on *habeas corpus* proceedings. (Orders XXX.)

**The bankrupt's liability to arrest.**—A bankrupt is liable to arrest, pending bankruptcy proceedings, upon a debt created by his defalcation of the proceeds of goods sent to him to be sold on commission and for which he refuses to account. (In re Kimball, 2 N. B. R. 74; affirmed, 2

N. B. R. 114; 2 Ben. 554; Fed. Cas. 7768.) And if arrested on an execution issued on a judgment in an action for fraud, he will not be released pending proceedings in bankruptcy. (In re Whitehouse, 4 N. B. R. 15; 1 Lowell, 429; Fed. Cas. 17564; In re Patterson, 1 N. B. R. 58; 2 Ben. 155; 15 Pittsb. Leg. J. 241; Fed. Cas. 10817.) He will not be released by the bankruptcy court when under arrest upon process in an action for fraud (In re Devoe, 2 N. B. R. 11; 1 Lowell, 251; 7 Amer. Law Reg. (U.S.) 690; 1 Amer. Law T. Rep. Bankr. 90; Fed. Cas. 3843); nor when held in arrest in a judgment in an action for fraud, although the judgment debtor may have proved his debt in the proceedings. (In re Robinson, 2 N. B. R. 108; 6 Blatchf. 253; 36 How. Pr. 176; 2 Amer. Law T. Rep. Bankr. 18; Fed. Cas. 11939.) But a civil action for fraud will be stayed until the final determination of the bankruptcy proceedings. (In re Migel, 2 N. B. R. 153; Fed. Cas. 9538.) The mere filing, however, of charges of fraud in a pending civil suit does not act as such a stay. (Minon v. Van Nostrand, 4 N. B. R. 28; 1 Lowell, 458; Fed. Cas. 9642.) A debtor arrested at the suit of his creditor in a civil action pending in a state court, and afterwards adjudicated a bankrupt, will not be discharged by the bankruptcy court (In re Hazleton, 2 N. B. R. 12; 1 Lowell, 270; 1 Amer. Law T. Rep. Bankr. 105; Fed. Cas. 6287), unless the debt on which he is arrested is one of which a discharge in bankruptcy acts as a release. (Brandon National Bank v. Hatch, 16 N. B. R. 468.) He will not be released, even on a writ of *habeas corpus*, if the debt be not dischargeable in bankruptcy (In re Valk, 3 N. B. R. 73; 3 Ben. 431; Fed. Cas. 16814; In re Alsberg, 16 N. B. R. 116; Fed. Cas. 261), even though arrested before the proceedings in bankruptcy have commenced. (In re Walker, 1 N. B. R. 60; 1 Lowell, 222; Fed. Cas. 17060.)

A debtor under arrest, but in the custody of his bail, is, when surrendered in discharge thereof, theoretically and practically in arrest, substantially, to all intents and purposes, as if he had never been released on bail. (In re Hazleton, 2 N. B. R. 12; 1 Lowell, 270; 1 Amer. Law T. Rep. Bankr. 105; Fed. Cas. 6287.)

**The bankrupt's exemption from arrest.**—Where proceedings in bankruptcy have been commenced, the bankrupt court has a right to protect the bankrupt from an action and arrest under the authority of a state court, and may issue a writ of *habeas corpus* to that end. (In re Williams and McPheeters, 11 N. B. R. 145; 6 Biss. 233; 7 Chi. Leg. News, 49; Fed. Cas. 17700.) This exemption is conferred because the party is adjudged a bankrupt by the district court, and the enforcing of the exemption by affirmative action is an act "to be done under and in virtue of the bankruptcy." The court has power to relieve him from arrest, on process of a state court, in an action founded upon a debt that may be discharged in bankruptcy; and the question whether the debt be one contracted in fraud may be examined into and determined by the district court. (In re Glaser, 1 N. B. R. 73; 15 Pittsb. Leg. J. 265; 2 Ben. 180; 1 Amer. Law T. Rep. Bankr. 57; Fed. Cas. 5474; In re Smith et al., 18 N. B. R. 24; Fed. Cas. 12976.)

An agent who sells goods for his principal on commission and pays over the balance of sales monthly is released from liability for an unpaid balance by a discharge in bankruptcy, such debt not having been created in a "fiduciary character;" and, if such debtor be arrested under a state statute, he will be released on application to the district court. (*Grover & Baker v. Clinton*, 8 N. B. R. 312; 6 Chi. Leg. News, 33; 21 Pittsb. Leg. J. 34; Fed. Cas. 5845.) A bankrupt cannot be held in arrest upon a judgment for costs in a proceeding in a state court (*In re Borst*, 2 N. B. R. 62; 1 Gaz. 18; Fed. Cas. 1665); nor upon a judgment in trespass when he has received his discharge in bankruptcy. (*In re Simpson*, 2 N. B. R. 17; Fed. Cas. 12879.) And if arrested under a warrant of a state court for fraudulently conveying his property prior to the passage of the Bankrupt Act, he may be discharged, since the title to the property fraudulently conveyed should be regarded as vested in the assignee. (*Goodwin v. Sharkey*, 3 N. B. R. 138.) But when a court of bankruptcy has no power to discharge a judgment, it cannot interfere to prevent its enforcement by imprisonment, unless necessary to the exercise of its jurisdiction. (*In re Pettis*, 2 N. B. R. 17; Fed. Cas. 11046.) If the bankrupt be arrested on an attachment issued by a commissioner in chancery of a state court in proceedings to discover a bankrupt's estate to satisfy a lien established prior to bankruptcy, he will be discharged on application to a United States court. (*Ex parte Taylor*, 16 N. B. R. 40; 1 Hughes, 617; 24 Pittsb. Leg. J. 205; Fed. Cas. 13773.)

A composition satisfies the debt, though based upon a sale procured through false representations, and will render void an arrest upon civil process. (*Bamberg et al. v. Stern*, 18 N. B. R. 74.) Subsequent to final judgment, a stay of a proceeding for the purpose of putting in motion the remedy of arrest reserved to the creditor is not allowable. (*In re Whitney*, 18 N. B. R. 563; Fed. Cas. 17581.)

b. The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison

him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

[Act of 1867. SEC. 40. . . . If it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest the alleged [bankrupt] and him safely keep, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until the decision of the court upon the petition or the further order of the court, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court.]

**Arrest of bankrupt to secure his attendance.**—Under the act of 1867 it has been held that the arrest of the debtor under a provisional warrant to secure his attendance at the hearing and adjudication is authorized, but no arrest can be made under the warrant after adjudication. A bond given by the debtor to secure his release from an arrest made after adjudication is therefore void. (*Usher v. Pease et al.*, 12 N. B. R. 305.) In an application for a provisional warrant and order of arrest there should be filed a separate petition, supported by affidavits of persons having knowledge of the facts, when the same are not stated in the petition of the petitioner's own knowledge. (*In re McKibben*, 12 N. B. R. 97; *Fed. Cas.* 8859.) A provisional warrant may issue in the case of a debtor adjudicated bankrupt on a voluntary petition and who remains in control of his property and disposes of some of it, if he expresses an intention of going abroad to adjust his foreign accounts. (*In re Hale*, 18 N. B. R. 335; *Fed. Cas.* 5911.)

**Sec. 10. Extradition of bankrupts.**—*a.* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.



When a bankrupt has once been extradited, he may be detained (sec. 9), and obedience to all lawful orders enforced by fine or imprisonment, or both (sec. 2—13).

*B. H. Maiden*

**Sec. 11. Suits by and against bankrupts.—a.** A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

[Act of 1867. Sec. 21. . . . That no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced or unsatisfied judgments already obtained thereon, shall be deemed to be discharged and surrendered thereby; and no creditor whose debt is provable under this act shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge, and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed as aforesaid.]

This section makes a distinction between suits upon claims from which a discharge would be a release and those in which it would not. The logic of this provision is plain. To prosecute to judgment a suit pending against a person at the time the petition is filed is useless, if it is based upon a claim from which a discharge would be a release, as under any circumstances each creditor would share equally with the others in the distribution of the estate and his rights would be fully preserved

by proving his claim against the estate. If, however, the bankrupt is not discharged, the suit may then be prosecuted to judgment. The stay must be until after an "adjudication," which means the day of the entry of a decree that the defendant in a bankruptcy proceeding is a bankrupt, or, if such decree is appealed from, then the date when such decree is finally confirmed. (Sec. 1—2.)

Non-liquidated claims against the estate may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be allowed and proved against the estate. (Sec. 63b.)

**Stay of suits — Jurisdiction of courts.**— Application for injunction to stay proceedings must be heard and decided by the court of bankruptcy. (Orders XII.) The United States district court is a court of equity having cognizance of all cases in controversy between the bankrupt and his creditors, and has the same power to restrain creditors in judgments at law against a bankrupt that a state court of equity would have over such creditors if the debtors were not bankrupts. (Fowler, Ass., v. Dillon et al., 12 N. B. R. 308; 1 Hughes, 232; Fed. Cas. 5000.) It has full jurisdiction to suspend or control suits brought in state courts against a bankrupt. (In re Davis, 8 N. B. R. 167; Fed. Cas. 3619.) But it has no authority to withdraw from the state court suits pending therein between the bankrupt and other parties and compel their trial in the district court. (Samson v. Burton, 4 N. B. R. 1; 5 Ben. 343; Fed. Cas. 12285.) It may restrain the sheriff of the state court from levying on the property of the bankrupt to satisfy a judgment of the latter court, although the judgment was obtained prior to the adjudication of bankruptcy. (In re Mallory, 6 N. B. R. 22; 1 Sawy. 88; Fed. Cas. 8991.)

The bankruptcy court has no jurisdiction over a state court, but it has full and complete original jurisdiction of the bankrupt and all its assets and creditors, and may fine and imprison any of said creditors for interfering with the assets in the state court without permission of the district court, on any debt which might be proven against the estate of the bankrupt. (In re Winn, 1 N. B. R. 131; 1 Amer. L. T. Rep. Bankr. 17; Fed. Cas. 17876; Markson et al. v. Heaney, 4 N. B. R. 165; 3 Chi. Leg. News, 153; Fed. Cas. 9098; Irving v. Hughes, 2 N. B. R. 20; 7 Amer. Law Reg. (N. S.) 209; 6 Phila. 451; 24 Leg. Int. 380; 15 Pittsb. Leg. J. 121; Fed. Cas. 7076; In re Whipple, 13 N. B. R. 373; 6 Biss. 516; 8 Chi. Leg. News, 134; Fed. Cas. 17512.) It is within the power of the bankruptcy court to permit a sale under execution where an injunction has been granted restraining such sale, and the judgment creditors are bound by the bankrupt court's order and cannot recover the proceeds of the sale from the sheriff. (O'Brien v. Weld et al., 15 N. B. R. 405; Samson v. Burton, 6 N. B. R. 403; Markson et al. v. Heaney, 4 N. B. R. 165; 1 Dill 497; Fed. Cas. 9098.)

When the right of a state court is subject to be impeached, it can only be done by the intervention of the assignee. (Valliant, Ass., v. Childress, 11 N. B. R. 317.) An attempt of a state court to collect and distribute

the assets of an insolvent corporation is in contravention of the bankruptcy law, although the law under which the state court proceeds does not provide for or purport to discharge the debtor from its liabilities. (In re Merchants' Insurance Co., 6 N. B. R. 43; 8 Biss. 162; 20 Pittsb. Leg. J. 32; 4 Chi. Leg. News 73; Fed. Cas. 9441.) The jurisdiction of a state court does not extend to the administration of the assets of an insolvent bankrupt, but the property of the corporation should be surrendered into the court of bankruptcy to be there administered upon (Thornhill et al. v. Bank of Louisiana, 3 N. B. R. 110; 3 Amer. Law T. 38; 2 Chi. Leg. News, 157; 1 Amer. Law T. Rep. Bankr. 156; Fed. Cas. 13990; In re Independent Ins. Co., 6 N. B. R. 260; Holmes, 103; Fed. Cas. 7017; In re Merchants' Ins. Co., 6 N. B. R. 43; 3 Biss. 162; 4 Chi. Leg. News, 73; 20 Pittsb. Leg. J. 32; Fed. Cas. 9441); but a district court has no jurisdiction to order summarily the delivery to an assignee of goods of a lessee seized by the sheriff under a writ of provisional seizure, obtained by the lessor prior to proceedings in bankruptcy. (Marshall v. Knox et al., 8 N. B. R. 97; 16 Wall. 551.) The proceeds of sale of mortgaged property in the possession of a state court, not brought there by final process to enforce the mortgage lien, must be paid over to the assignee in bankruptcy of the mortgagor, and the mortgagee must go into the bankrupt court and assert his lien there. (Morris v. Davidson, 11 N. B. R. 454.)

After it is shown that the defendant has been declared a bankrupt, a court is bound to take judicial notice that all his property and effects were vested by operation of law in the assignee. (Morris v. Davidson, 11 N. B. R. 454.)

**What suits stayed.**—When a debtor is adjudged a bankrupt, all proceedings against him in the state court must be stopped if the subject-matter of the suit can be proven against his estate in bankruptcy; and any creditor who holds a claim against the estate of the bankrupt which might be proven in bankruptcy, whether the debt is secured by lien or not, can only enforce such debt in the state court upon permission of the district court. (In re Winn, 1 N. B. R. 131; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876; In re Van Buren, 19 N. B. R. 149; Fed. Cas. 16333; In re Belden, 6 N. B. R. 443; 5 Ben. 476; Fed. Cas. 1239; R. S. McGehee et al. v. Hentz et al., 19 N. B. R. 136; Fed. Cas. 8794; Penny v. Taylor, 10 N. B. R. 200; Fed. Cas. 10957.) So if the bankrupt appears and moves for a stay of proceedings in the suit in a state court for the foreclosure of a mortgage, the portion of the suit asking for personal judgment should be stayed. (McKay v. Funk, 13 N. B. R. 334; Markson et al. v. Heaney, 12 N. B. R. 484; In re Snedaker, 8 N. B. R. 155; In re Migell, 2 N. B. R. 153; Fed. Cas. 9538.) Also an action on a claim originating in a contract fraudulently induced, sounding in damages, is within the provisions of the bankrupt law prohibiting any creditor from prosecuting to judgment a suit on a provable debt before the debtor's final discharge has been settled. (In re Schwarz, 15 N. B. R. 330; 14 Blatchf. 196; 52 How.

Pr. 513; 15 Alb. Law J. 350; Fed. Cas. 12502; sec. 5106, R. S.) A proceeding to revive a judgment so that it operates as a lien on real estate is a proceeding that may be stayed (*Bratton v. Anderson*, 14 N. B. R. 90); and execution may be stayed in order to give the parties an opportunity to apply to a district court, where the assignee appears in an action in the state court brought to enforce a lien against the bankrupt's estate. (*Rowe v. Page*, 13 N. B. R. 366.)

A vessel belonging to bankrupts in the hands of the assignee as assets cannot be attached in an action *in rem* for damages caused by her collision with another vessel prior to the adjudication in bankruptcy, and the bankruptcy court will restrain such proceedings by injunction. (*In re Peoples' Mail S. S. Co.*, 2 N. B. R. 170; 3 Ben. 236; Fed. Cas. 10970.) In an action for recovery of moneys or goods, where one of the plaintiffs testifies that his firm has been discharged as bankrupts since suit was brought, such fact is not ground for a nonsuit, as the court may direct the jury to find that plaintiffs recover for use of the assignee. (*Wooddail, Adm'r, v. Austin et al.*, 10 N. B. R. 545.) Although the effect of bankruptcy upon suits pending in state courts is to stay or suspend them, they may, with leave of the bankrupt court, be prosecuted to judgment to ascertain the amount due, but final process to procure satisfaction cannot be issued and executed (*Allen & Co. v. Montgomery et al.*, 10 N. B. R. 503); but proceedings in an action in a state court will not be stayed simply on the ground that the plaintiffs have taken proceedings to have the defendants declared bankrupt. (*Maxwell v. Faxton*, 4 N. B. R. 60.)

An injunction to restrain the prosecution of an action against the bankrupt in a state court, during the pendency of a composition, is proper where instalments of the composition have been tendered to the creditors, and the bankrupt is not permitted to plead the composition as a bar to the action. (*In re Shafer et al.*, 17 N. B. R. 116; 1 N. J. Law J. 66; Fed. Cas. 12695.)

The bankruptcy of a corporation does not prevent judgments being obtained against it, and the creditor, in default of obtaining satisfaction under the judgment from the property of the corporation, may pursue the remedy given him by statute against stockholders. (*Allen v. Ward*, 10 N. B. R. 285.)

At the appointment of an assignee or the dismissal of the petition, the right of action against the debtor is suspended, for a payment to a bankrupt after the filing of the petition for adjudication will not discharge the debtor's liability to an after-appointed assignee. (*Booth v. Meyer et al.*, 14 N. B. R. 575.) Application to begin an action against a bankrupt for a debt to which a discharge would not be a bar will be entertained if it appears that it must be commenced forthwith for the purpose of preventing the statute of limitations from running against it, or to enable the making of service, or that the testimony might be lost, and the court

will then stay the suit to await the determination of the question of the bankrupt's discharge or the expiration of a reasonable time to make the application therefor (In re Ghirardelli, 4 N. B. R. 42); but the bankrupt is not entitled to a stay of proceedings where the claim sued upon does not constitute a debt provable in bankruptcy. (Zimmer v. Schleeauf, 11 N. B. R. 818.)

Execution in the hands of the sheriff against the property of a bankrupt may be stayed, as the commencement of proceedings in bankruptcy transfers to the court jurisdiction over the bankrupt, his estate, and parties, and questions connected therewith, and operates as a *supersedeas* of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of the court, until the question of bankruptcy shall have been disposed of (Jones v. Leach, 1 N. B. R. 165; Fed. Cas. 7475), though it cannot restrain the creditor, by reason of his being beyond reach of the process. (In re Tift, 19 N. B. R. 201; Fed. Cas. 14084.) An honest execution levied upon the debtor's property before the filing of his petition is not rendered void by such petition, as the court will interfere with the exercise of the right of the sheriff only where its exercise would materially affect the interests of the general creditors. (Goddard v. Weaver, 6 N. B. R. 440; Fed. Cas. 5495; Beattie v. Gardner et al., 4 N. B. R. 106; Fed. Cas. 1195; In re Shuey, 9 N. B. R. 526; 6 Chi. Leg. News, 248; Fed. Cas. 12821.) Property fraudulently conveyed, before the enactment, by the debtor, who subsequently applies for a discharge in bankruptcy, will be regarded as vested in the assignee; and proceedings by a creditor for the recovery of such property under a state law are suspended by proceedings in bankruptcy. (Goodwin v. Sharkey, 8 N. B. R. 188; In re Hufnagel, 12 N. B. R. 554; Fed. Cas. 6837.)

Whether a railroad chartered in two states is two corporations acting as a partnership, or one, a proceeding in bankruptcy will be stayed pending a prior proceeding of the same nature in the other state. (In re Boston H. & E. R. R. Co., 6 N. B. R. 209; 6 Amer. Law Rev. 582; Fed. Cas. 1678; 9 Blatchf. 101.)

An order of arrest granted by a state court, in a suit against a bankrupt, upon an affidavit showing that the suit was founded on a debt created by fraud of the bankrupt, will not be vacated by the bankruptcy court, but the suit may be stayed until the final determination of the bankruptcy proceedings. (In re Migel, 2 N. B. R. 158; Fed. Cas. 9538; In re Patterson, 1 N. B. R. 58; 2 Ben. 155; 15 Pittsb. Leg. J. 241; Fed. Cas. 10617.) It would, perhaps, be the proper course for the court to issue a writ of *habeas corpus* and thus secure the bankrupt from arrest under proceedings in a state court. (In re Williams et al., 11 N. B. R. 145; 6 Biss. 238; 7 Chi. Leg. News, 49; Fed. Cas. 17700.)

**Who may obtain stay.**—Before the appointment of an assignee, a petition for an injunction can be filed only by the bankrupt; but, after

assignees are appointed, the petition should be filed by them (*In re Bowie*, 1 N. B. R. 185; 15 Pittsb. Leg. J. 448; 1 Amer. Law T. Rep. Bankr. 97; Fed. Cas. 1723); but an assignee who voluntarily appears in proceedings in a state court to foreclose a mortgage, instituted before the bankruptcy proceedings, cannot, after a sale has been made, apply for an injunction to restrain further proceedings in the state court. (*Augustine, Ass. v. McFarland*, 13 N. B. R. 7; 1 N. Y. Wkly. Dig. 818; Fed. Cas. 648.)

**Ground must be pleaded.**—The mere filing of a petition in involuntary bankruptcy does not divest the jurisdiction of a state court over an action (*In re Irving et al.*, 14 N. B. R. 289; 8 Ben. 463; 2 N. Y. Wkly. Dig. 500; Fed. Cas. 7073); *Murphy v. Young*, 18 N. B. R. 505); to affect such jurisdiction over pending actions, the adjudication or discharge must be pleaded (*Serra é Hijo v. Hoffman & Co.*, 17 N. B. R. 124; *Haber v. Klauberger et al.*, 15 N. B. R. 377; *Holden v. Sherwood*, 18 N. B. R. 111; *Bracken v. Johnston*, 15 N. B. R. 106; 4 Dill. 518; 5 Amer. Law Rec. 461; 4 Cent. Law J. 9; 11 Amer. Law Rev. 609; 3 N. Y. Wkly. Dig. 573; 1 Cin. Law Bul. 353; Fed. Cas. 1761; *Revere Copper Co. v. Dimock*, 19 N. B. R. 372; *Smith, Stebbins & Co. v. Engle et al.*, 14 N. B. R. 489; *Hubert v. Horter*, 14 N. B. R. 430); which may be done at any time after the institution of bankruptcy proceedings; but if he does neither, a judgment rendered against him is lawful and valid. (*Cutter et al. v. Evans*, 11 N. B. R. 448; *Flanagan v. Pearson*, 14 N. B. R. 37.) Where the declaration of bankruptcy has been suggested as a defense to an action and not denied, the plaintiff is estopped from further proceeding with his suit, in the absence of an order authorizing it. (*Penny v. Taylor*, 10 N. B. R. 200; Fed. Cas. 10957.)

It has been held that where a bankrupt's counsel fails to appear for him in an action because he supposed that the counsel for a co-defendant also represented the bankrupt, a review of the judgment by default will be granted so that a discharge in bankruptcy may be pleaded. (*Shurtleff v. Thompson*, 12 N. B. R. 521.) Where an assignee prayed to have a sale under foreclosure restrained, after the proceedings had reached a stage where substantially all the expenses except those which would attend any sale of the property had been incurred, his petition was dismissed and the costs taxed against him because of his lack of diligence. It would seem that the bankrupt alone may apply for a stay of proceedings at any time. (*In re Brinkman*, 6 N. B. R. 541; Fed. Cas. 1883; *The "World" Co. v. Brooks*, 3 N. B. R. 146.) An affidavit of defense setting up that defendants were adjudicated bankrupts, but that the time had not arrived for application for a discharge, is sufficient to stay the action and prevent judgment, although the facts set up in the affidavit may not constitute a defense. (*Frostman et al. v. Hlicks et al.*, 15 N. B. R. 41; sec. 5106.)

Where a suit is restrained pending the bankrupt's application for a discharge, if the discharge would be a bar to the suit the creditors'

remedy is to go into the bankruptcy court and oppose the discharge in the manner prescribed by the bankrupt law. (In re Archenbrow, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 504.)

"Suits not stayed."—A suit will not be stayed where the subject-matter of the action is not a debt or liability dischargeable in bankruptcy. (Treadwell et al. v. Halloway et al., 12 N. B. R. 61; In re Pitts, 19 N. B. R. 63; Fed. Cas. 11190; Mason et al. v. Warthen, 14 N. B. R. 346.) A claim for alimony is not a provable debt, and proceedings to enforce its payment cannot be stayed by a bankrupt court. (In re Lachemeyer, 18 N. B. R. 270; 18 Alb. Law T. 242; Fed. Cas. 7966; In re Garrett, 11 N. B. R. 493; 2 Hughes, 235; Fed. Cas. 5252.) Charges of fraud against a bankrupt, filed by a creditor before a magistrate under a state law, do not constitute a new suit which should be stayed. (Minon v. Van Nostrand, 4 N. B. R. 28; 1 Lowell, 458; Fed. Cas. 9642.) Where the right of a creditor and that of a debtor to redeem property sold under an execution are distinct and independent under the state law, the bankruptcy of the debtor does not affect the right of the creditor. (Trimble v. Williamson, 14 N. B. R. 53.) The bankruptcy of defendants is no reason why a court should not hear and decide upon a motion to correct its minutes and make them speak the truth. (Woolfolk et al. v. Gunn, 10 N. B. R. 526.)

Where bankrupts were executors and universal legatees in a will, a suit brought against them by the heirs of deceased prior to institution of proceedings in bankruptcy, asking that the will be set aside and an accounting be had, will be allowed to proceed. (Hewett, Ex'r, v. Norton, Ass., 18 N. B. R. 276; 1 Woods, 68; 1 N. Y. Weekly Dig. 535; Fed. Cas. 6441.) The lien of a mechanic or material-man is not dissolved by his filing a petition in voluntary bankruptcy, and the jurisdiction of the state court over such lien will not be interfered with. (In re Clifton et al. v. Foster et al., Ass., 8 N. B. R. 162.) Should an assignee and general creditors voluntarily abandon claim to incumbered property, such property may be subjected by the state court to the satisfaction of the secured creditors' claims, and such courts may afford him any relief touching the property to which he would be entitled if bankruptcy proceedings had not been instituted. (Second National Bank of Louisville v. Bank, 11 N. B. R. 49.)

A suit may be permitted to proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in the bankruptcy proceedings, but execution shall be stayed. (In re Rundle et al., 2 N. B. R. 49; 1 Chi. Leg. News, 80; Fed. Cas. 12138; In re Winn, 1 N. B. R. 132; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.) Further than this, a mortgagee may institute a proceeding in a state court to foreclose his mortgage after the institution of proceedings in bankruptcy, if the assignee takes no steps to redeem the mortgaged property. (McKay v. Funk, 18 N. B. R. 334.) If proceedings to foreclose are pending in a state court at the time of institution of proceedings in bankruptcy, a decree

rendered and a sale had after the beginning of bankruptcy proceedings are valid, and a good title will pass by the sale. (*Eyster v. Gaff et al.*, 13 N. B. R. 546; 91 U. S. 521; *Cutter, Ass., etc. v. Dingee*, 14 N. B. R. 294; 8 Ben. 469; Fed. Cas. 3518; *In re Wynne*, 4 N. B. R. 5; 2 Amer. Law T. Rep. Bankr. 116; Fed. Cas. 18117; *Jerome et al., Ass., v. McCarter*, 15 N. B. R. 546.) But foreclosure proceedings brought upon property of a person adjudicated a bankrupt are void, unless brought with consent of the bankrupt court. (*In re Brinkman*, 7 N. B. R. 421; Fed. Cas. 1884; *In re Duryea*, 17 N. B. R. 495; Fed. Cas. 1196; *In re Kerosene Oil Co.*, 2 N. B. R. 164; 8 Ben. 35; 2 Amer. Law T. Rep. Bankr. 79; Fed. Cas. 7725.)

An appeal taken by a bankrupt before bankruptcy will not be dismissed on the ground that the appellant is no longer the party in interest, and it may be heard in the name of the bankrupt or his assignee (*O'Neil v. Dougherty*, 10 N. B. R. 294); and an affirmance of the judgment in the absence of a suggestion of his bankruptcy is not a nullity. (*Flanagan v. Pearson*, 14 N. B. R. 37.)

If, pending composition proceedings and before they can be set up as a defense, the bankrupt files an answer in a suit in a state court, and, after the composition is perfected, applies for leave to put in a supplemental answer, which is refused, and judgment in default taken against him, the bankruptcy court will not grant an injunction restraining the enforcement of the judgment. (*In re Nebenzahl*, 17 N. B. R. 23; 9 Ben. 243; Fed. Cas. 10074.) In composition cases the court may provide for an unliquidated claim by permitting the prosecution of a pending action in the state court, or by ordering an inquiry in the matter at the bar of the bankruptcy court. (*Ex parte Trafton*, 14 N. B. R. 507; 2 Lowell, 505; Fed. Cas. 14133.) The mere filing of a petition in bankruptcy by one partner against his copartner does not prevent the latter from bringing a suit on his individual claim and prosecuting it to judgment. (*Booth v. Meyer et al.*, 14 N. B. R. 575.) When a suit is brought by a bankrupt with the consent of the trustee in bankruptcy, if the verdict is for the plaintiff it need not be for the use of the trustee. (*Southern Express Co. v. Connor*, 12 N. B. R. 53.) The right of action against a party as a stockholder of a corporation is not affected by the bankrupt law. (*Allen v. Ward*, 10 N. B. R. 285.) Where the indorsers of a note file a voluntary petition in bankruptcy before the maturity of the note, and propose a composition, which is not accepted and concluded, the holders of the note may recover on it if they took no part in the proceedings in composition. (*Smith v. Krauskopf et al.*, 18 N. B. R. 6.) Where a composition is fraudulently obtained, an action may be maintained by creditors on their original claim, although they have received more than their ten per centum under the provisions of the composition. (*Elfelt v. Snow*, 6 N. B. R. 57; 2 Sawy. 94; Fed. Cas. 4342.)

If proceedings in bankruptcy are commenced within four months after the issuing of an attachment, a judgment entered afterwards therein is void. (*King v. Loudon, Ass.*, 14 N. B. R. 383.)



A restraining order directed to the debtor and "all other persons" need not contain the names of those persons if the order is served upon the persons to be restrained. (In re Sady Bryan Mining Co., 6 N. B. R. 252; Fed. Cas. 7980.) Where the injunction is modified so as to allow the sheriff to sell the attached property, provided he deposits the proceeds subject to the further order of the court, such order must be strictly followed, and the deposit cannot be dispensed with by consent. (In re Mickel et al., 19 N. B. R. 374; Fed. Cas. 9529.) Where an injunction has been granted by the bankruptcy court restraining the sheriff from selling under an execution from the state court, in seeking to have the injunction dismissed the judgment creditor should proceed by a motion to dissolve it. If the creditor proceeds by a petition to dismiss the injunction, the injunction will be continued. (In re Mallory, 6 N. B. R. 22; 1 Sawy. 88; Fed. Cas. 8991.) The debtor's discharge in bankruptcy operates as a dissolution of an injunction restraining creditors from suing pending adjudication. (In re Thomas, 8 N. B. R. 7; Fed. Cas. 19390.) An order forbidding all proceedings to enforce a claim upon which an attachment is founded is not violated by the dismissal of an appeal in a state court by an order denying the motion to quash and vacate the attachment for want of prosecution, the bankrupt's counsel being present and not desiring to proceed. (In re Hirsch, 2 N. B. R. 1; 2 Ben. 498; 1 Amer. Law T. Rep. Bankr. 92; Fed. Cas. 6529.) Where funds belonging to a bankrupt have been misused, the wrong-doers will be enjoined from collecting rents from the real estate in which the bankrupt has any legal or equitable interest. (Keenan v. Shannon et al., 9 N. B. R. 441; 10 Phila. 219; 31 Leg. Int. 85; Fed. Cas. 7640.)

**Suits in general.**—If the exempted property of the bankrupt has been wrongfully seized on execution, the bankrupt has the same rights before the state tribunals as any other person whom it is sought to deprive of a homestead. (In re Everitt, 9 N. B. R. 90; Fed. Cas. 4579.) Where the time has elapsed within which a discharge could be granted, the proceedings in bankruptcy are not terminated without a discharge, so that a right of action will be revived. (Wood v. Hazen, 15 N. B. R. 491; sec. 89.)

Where the assignee was not made a party to partition proceedings of real estate, he may sell the bankrupt's undivided interest therein. (Smith v. Scholtz et al., 17 N. B. R. 520.) The assignee, in a judgment obtained in the federal court, on which execution issued and under which the marshal sold, is entitled to the proceeds of the sale, although the judgment, execution and levy under it were subsequent to a judgment, execution and levy of proceeds from a state court. (In re Jordan, 8 N. B. R. 45; Fed. Cas. 7513.) The dissolution by a state court of a corporation before the adjudication in bankruptcy, but after service of the order to show cause, does not deprive the bankrupt court of jurisdiction or abate the proceedings. (Platt v. Archer, 6 N. B. R. 465; 9 Blatchf. 559; Fed. Cas. 11213.)

*b*. The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

For corresponding feature of act of 1867, *vide* notes under "*c*," this section.

**When assignee may become a party.**—The assignee is entitled to be made a party to suits pending in the state court by or against the bankrupt at the time of the commencement of bankruptcy proceedings, and the bankrupt will be enjoined from interfering. (*Samson v. Burton*, 4 N. B. R. 1; Fed. Cas. 12385.) As to the time when an assignee may enter his appearance in a suit begun by the bankrupt before bankruptcy proceedings, it has been held that he may do so more than two years after his appointment. (*Latting v. Fassman et al.*, 17 N. B. R. 183.) If a conventional trustee, claiming title under assignment, files a bill to recover assets belonging to the estate, an assignee may intervene by a supplemental bill. (*Collateral Security Bank v. Fowler, Trustee*, 12 N. B. R. 289.) Where an assignee of a bankrupt defendant was appointed during pendency of the action, the other defendants cannot make the assignee a party defendant, or, if they have claim for contribution against the bankrupt, the remedy is by intervention in the bankruptcy proceedings. (*Oliver v. Cunningham et al.*, 19 N. B. R. 400; Fed. Cas. 10493.) The assignee cannot be compelled to become a party to an action against the bankrupt by the court in which the action is pending. (*Serra é Hijo v. Hoffman & Co.*, 17 N. B. R. 124.) If the assignee appears and pleads in an action he waives the want of notice before the bringing of the suit. (*Rowe v. Page*, 13 N. B. R. 366.) A plea of a discharge (*Serra é Hijo v. Hoffman & Co.*, 17 N. B. R. 124), or the defense of usury, is a personal one to the bankrupt, and such defense is not available by the assignee. (*In re Kitzinger et al.*, 19 N. B. R. 152; Fed. Cas. 7861.)

*c*. A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

[Act of 1867. SEC. 14. . . . he may sue for and recover the said estate debts and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been presented or defended by such bankrupt. . . .]

SEC. 16. . . . If, at the time of the commencement of proceedings in bankruptcy, an action is pending in the name

of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him.]

**Suits prosecuted by trustee.**—The assignee may prosecute or not, at his election, any action commenced by the bankrupt before bankruptcy, the subject-matter of which passes to the assignee; where it does not pass, the bankrupt has the right to prosecute it (*Towle v. Davenport*, 16 N. B. R. 478), as in the case of a right of action for a mere personal injury. (*Noonan v. Orton*, 12 N. B. R. 405.) Upon the question as to the effect of the assignee's refusal to prosecute a suit in which he is entitled to enter his appearance, the decisions are conflicting, it having been held on the one hand that such a suit must be dismissed (*Towle v. Davenport*, 16 N. B. R. 478), and on the other that it may be prosecuted in the name of the bankrupt. (*Noonan v. Orton*, 12 N. B. R. 405.) A suit in equity is rendered defective merely by the bankruptcy of the plaintiff, and the assignee may be brought forward by supplemental bill. (*Collateral Security Bank v. Fowler, Trustee*, 12 N. B. R. 289.) Where an appellant in the supreme court of the United States becomes bankrupt after his appeal is taken, his assignee in bankruptcy may, on motion, be substituted as appellant in the case. (*Herndon v. Howard*, 4 N. B. R. 61; 9 Wall. 664.) Where at the time a firm is adjudged bankrupt there is pending an action for accounting by one partner against another, the right to continue the suit passes to the assignee, and such partner will be enjoined from further proceeding. (*In re Clark et al.*, 3 N. B. R. 123; 4 Ben. 88; 1 Amer. Law T. Rep. Bankr. 189; Fed. Cas. 2798.) The assignee on motion may have a case reinstated which has been compromised and dismissed by the bankrupt's counsel before the assignee's appointment, but after adjudication, although the bankrupt had assigned the subject-matter of the action to the counsel for his fees. (*Home Ins. Co. v. Hollis, Ass.*, 14 N. B. R. 337.) Where an assignee in bankruptcy was made party plaintiff with the wife of a bankrupt in a suit instituted in the name of the husband and wife on the choses in action owned by the wife before marriage, and judgment was recovered, the assignee may enforce such judgment and distribute the money among the creditors. (*In re Boyd*, 5 N. B. R. 199; 2 Hughes, 349; Fed. Cas. 1745.) An assignee upon petition in a state court may have a judgment set aside which was obtained within four months prior to bankruptcy. (*Jordan, Ass. v. Downey*, 12 N. B. R. 427.)

The right of a bankrupt who, prior to commencement of proceedings in bankruptcy, had brought suit, reverts to him to commence such action after the trustees in bankruptcy have completed their trusts, filed their final accounts and been discharged, if nothing has been done by

said trustees in the original suit in the interval. (*Connor v. Southern Express Co.*, 9 N. B. R. 138.) Where, more than two years after his appointment, an assignee was substituted as plaintiff in an action commenced in the name of the bankrupt, and a recovery was had in the action, it was held that the bankrupt could not claim the amount recovered on the ground that the limitation of the bankrupt law barred his remedy at the time of the substitution. (*Maybin v. Raymond, Ass.*, 15 N. B. R. 853; 4 Amer. Law T. Rep. (U. S.) 21; Fed. Cas. 9338.)

**Actions by trustees.**—Suit by the assignee must be brought within the period of limitation prescribed by the Bankrupt Act. (*Andrews, Ass. v. Dole et al.*, 11 N. B. R. 352; Fed. Cas. 373.) When he sues to establish title to and recover possession of real estate and the defendant pleads the statute of limitations, the fact that the assignee did not discover the property until a short time before instituting his action will not relieve him from the bar of the statute. (*Norton v. De La Villebeuve*, 13 N. B. R. 304; 1 Woods, 163; 2 N. Y. Wkly. Dig. 4; Fed. Cas. 10350.) The assignee may sue in a state court for the enforcement of any right vested in him by the Bankrupt Act, as for the recovery of property transferred in fraud of that act (*Cook v. Waters et al.*, 9 N. B. R. 155); for the proceeds of the sale of goods of the bankrupt under an attachment issued within four months of the institution of proceedings. (*Dambmann v. White et al.*, 12 N. B. R. 438.) He will not be a party to an action brought for the recovery of property alleged to have been wrongfully taken and converted by the bankrupt, and which was seized by the sheriff and delivered to the plaintiff, unless it is shown that there is good reason for believing that the bankrupt has some right to the property in dispute. (*In re Gunther et al. v. Greenfield*, 3 N. B. R. 179.)

The assignee may institute and prosecute to final judgment suits to recover the assets of the bankrupt in a United States court in a district other than that in which the decree in bankruptcy is entered. (*Dutcher v. Wright, Ass., etc.*, 16 N. B. R. 331; 94 U. S. 553.) He cannot impeach a conveyance of property of moderate value by the bankrupt to his wife when the bankrupt was in prosperous circumstances. (*Smith et al. v. Vogles, Ass.*, 13 N. B. R. 433; 92 U. S. 183.) The assignee may bring a suit in the circuit court to set aside a fraudulent conveyance of property by a bankrupt, after his discharge, which was concealed by the bankrupt. (*Nicholas, Ass. v. Murray et al.*, 18 N. B. R. 469; Fed. Cas. 10234.) He is not restricted to suing in the district courts in cases prescribed by the Bankrupt Act, by reason of being an assignee in bankruptcy, but may sue in the circuit court when, if an ordinary suitor, by the provisions of the Judiciary Act he would be entitled to sue in such court. (*Payson v. Dietz*, 8 N. B. R. 193; 5 Chi. Leg. News, 431; 30 Leg. Int. 313; Fed. Cas. 10861.)

An assignee who sues to recover property alleged to have been fraudulently conveyed by a bankrupt is not bound by a former decision that

the same allegations of fraud set up by a creditor in opposition to the bankrupt's discharge had not been proved as a matter of fact. (In re Penn et al., 8 N. B. R. 93; Fed. Cas. 10928.) At the assignee's suit, a general assignment for the benefit of creditors may be set aside. (Jackson, Ass., v. McCulloch et al., 18 N. B. R. 283; 1 Woods, 433; 1 N. Y. Wkly. Dig. 534; Fed. Cas. 7140.) A subsequent judgment creditor is not a necessary party in a suit between the assignee in bankruptcy and a prior judgment creditor. (Traders' Nat. Bank v. Campbell, 6 N. B. R. 853; 14 Wall. 87.)

The assignee may prosecute an action in trover for the recovery of property unlawfully and fraudulently transferred by the bankrupt. (Foster, Ass., v. Hackley, 2 N. B. R. 131; 2 Amer. Law T. Rep. Bankr. 8; 1 Chi. Leg. News, 187; Fed. Cas. 497.) Also to set aside a conveyance claimed to be void under a statute. (Thurmond v. Andrews and Wife, 18 N. B. R. 157.) He may sue at law to recover the balance due on a subscription of stock, and an order of the district court that the amount unpaid upon said stock should be paid by a certain date is conclusive as to his right to bring such suit. (Sanger v. Upton, Ass., 18 N. B. R. 226; 91 U. S. 56.)

The assignee of a bankrupt corporation does not represent creditors in their legal or equitable right to proceed against a trustee of the corporation for the purpose of excluding said trustee from any share in the assets, on the ground that he had made himself individually liable for the debts of the corporation by having, as an officer thereof, made false reports. (Bristol, Ass., v. Sanford, 18 N. B. R. 78; 12 Blatchf. 341; Fed. Cas. 1893.)

The assignee may proceed either at law or in equity to obtain possession of books claimed both by him and by an assignee of the bankrupt's own choosing. (Rogers v. Winsor, 6 N. B. R. 246; Fed. Cas. 12023.) A statement in a complaint that the plaintiff is assignee in bankruptcy may be treated as surplusage or as *descriptio personæ*. (Dambmann v. White et al., 12 N. B. R. 438.)

**Jurisdiction of courts.**—A state court may entertain an action brought by an assignee to recover money received as a preference. (Kammerer v. Tool, 12 N. B. R. 334.) Any circuit court having jurisdiction of the parties has jurisdiction of a claim to a part of the proceeds of a judgment where the assignee denies the claim. Whenever a state court has jurisdiction over controversies between the assignee and third parties, the circuit court has jurisdiction independent of the bankrupt law, if the proper citizenship of the parties exists. (Burbank v. Bigelow et al., Ass., 14 N. B. R. 445; 93 U. S. 479; Knight v. Cheney, 5 N. B. R. 305; Fed. Cas. 7883.) The district courts have jurisdiction of suits brought by assignees appointed by other district courts in bankruptcy cases. (Lothrop v. Drake et al., 18 N. B. R. 472; 91 U. S. 516.) If an assignee in bankruptcy submits himself to the jurisdiction of a state court he cannot,

after judgment, object to the power of such court, and a federal court cannot then assume jurisdiction. (*Scott & Nasse v. Kelly, Sheriff*, 12 N. B. R. 96.) But a state court has no jurisdiction to enjoin the assignee from collecting a debt due to the bankrupt. (*Southern et al. v. Fisher, Trustee*, 16 N. B. R. 414.)

**Suits against trustees.**—A suit against the assignee is the proper proceeding to establish a claim which has been rejected by the district court on his objection. (*Adams v. Meyers*, 8 N. B. R. 214; *Fed. Cas.* 62.) An action for the wrongful taking and conversion of property will not lie against the assignee, where a sheriff has delivered the property held by him under an execution levy to the marshal, who in turn delivered it to the assignee. (*Ansonia Brass & Copper Co. v. Pratt, Ass.*, etc., 16 N. B. R. 170; *In re Wagner et al. v. Wagner et al.*, 5 N. B. R. 23; 2 *Hughes*, 355; *Fed. Cas.* 14174.) Where a claim to property in the hands of the assignee is set up, and the validity of the claim is denied by the assignee, who asserts title to be in himself as such assignee, the claimant cannot proceed by summary petition. (*Hurst v. Teft, Ass.*, 13 N. B. R. 108; 12 *Blatchf.* 217; *Fed. Cas.* 6339; *In re Linforth et al.*, 16 N. B. R. 435; 4 *Sawy.* 370; *Fed. Cas.* 8369.) After the commencement of proceedings in bankruptcy, even though a suit was pending in the state court when the proceedings were instituted, a writ of sequestration cannot be issued to take property from the possession of the assignee. (*Hewett, Ex'r. v. Norton, Ass.*, 13 N. B. R. 276; 1 *Woods*, 68; 1 *N. Y. Weekly Dig.* 525; *Fed. Cas.* 6441.)

**Parties to suit.**—Where a junior mortgagee files a bill against a mortgagor or his assignee, prior incumbrancers are necessary parties where there is substantial doubt as to the amounts which are due, or the property covered by their liens. (*Sutherland et al. v. Lake Superior Ship Canal, Railroad & Iron Co.*, 9 N. B. R. 298; 1 *Cent. Law J.* 127; *Fed. Cas.* 13643.) A bankrupt before bankruptcy, or his assignee thereafter, is a necessary party to a suit in equity on an order on a general fund obtained or given by the bankrupt before bankruptcy. (*Walker, Ass. v. Seigel et al.*, 12 N. B. R. 394; 2 *Cent. Law J.* 508; *Fed. Cas.* 17085.) It has been held that in a suit brought to set aside a voluntary assignment as void, the subject of the assignment being properly transferable and vested in the assignee, all persons having an interest therein to be affected by a decree are properly joined as defendants. (*Onley, etc. v. Tanner et al.*, 19 N. B. R. 178; *Fed. Cas.* 10506.)

The proper remedy of a creditor to compel an assignee to institute proceedings to reach property fraudulently concealed or conveyed by the bankrupt is by petition to a court to enforce action by the assignee. (*Glenny v. Langdon et al.*, 19 N. B. R. 24; 98 *U. S.* 20.)

**Costs.**—The assignee is liable for costs, personally, only where guilty of misconduct or bad faith (*Hall, Ass., etc. v. Waterbury*, 19 N. B. R. 15); but if this is not shown, the costs should be paid out of the bank-

rupt's estate. (Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310.) Where a creditor calls for an investigation of the conduct of an assignee, alleging fraud in a sale of the bankrupt's property, it is proper that he should be required to give security for the costs which may be adjudged against him. (In re Peabody, 16 N. B. R. 248; 9 Chi. Leg. News, 248; Fed. Cas. 10866.)

d. Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

[Act of 1867. Sec. 14. . . . No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amends, should he see fit to do so.]

Courts of bankruptcy may close estates whenever they have been fully administered, though they may be re-opened whenever it appears that they were closed before being fully administered (sec. 8—8); in which event it would seem that, although the two years had commenced to run, the fact that an estate was re-opened would cause the two-year period to run from the time it was last closed.

**Limitation.**—An action must be brought within two years from the time the cause of action accrued, either by or against the assignee, and the assignee cannot, by amendment, be made a party more than two years after his appointment, to a suit brought by or against the bankrupt. (Cogdell, Ass., v. Exum, 10 N. B. R. 327.)

There is some question as to whether the limitation of two years will affect actions by the assignee to recover property fraudulently conveyed by a debtor in view of impending bankruptcy, where the fraud was not discovered within such period, and the action is brought only after the fraud is discovered, it having been held in one case that, under such circumstances, the action may be brought after the lapse of two years. (Bailey, Ass., v. Weir, 12 N. B. R. 24; 21 Wall. 342.) It has also been held that this limitation of the Bankrupt Act applies only to cases where suit is brought in regard to property held adversely to the bankrupt and assignee, or to cases where suit is brought to recover any debt that may be due the bankrupt (Pickett, Ass., v. McGavick, 14 N. B. R. 236; 3 Cent. Law J. 808; 18 Alb. Law J. 218, 400; 2 N. Y. Wkly. Dig. 378; Fed. Cas. 11126; Smith v. Crawford, 9 N. B. R. 38; 6 Ben. 497; Fed. Cas. 13030); and in other cases, that the limitation is a bar to a recovery by the assignee, although he has no notice of the existence of the property

sought to be recovered. (*Freelander et al. v. Holloman et al.*, 9 N. B. R. 331; *Fed. Cas.* 5081; *Bean v. Brookmire*, 4 N. B. R. 57; 10 *Amer. Law Reg. (N. S.)* 181; 4 *West. Jur.* 392; *Fed. Cas.* 1168.)

Under the law of 1867, the statute began to run when the estate vested in the assignee as such (*Foreman, Ass. v. Bigelow*, 18 N. B. R. 457; 7 *Reporter*, 137; 26 *Pittsb. Leg. J.* 128; *Fed. Cas.* 4934); but under the present law it does not begin to run until the estate has been closed. It has been held that, although the suit may have been commenced within proper time, if the summons does not issue until the expiration of the time prescribed by the statute, the action is barred. (*Walker, Ass., etc. v. Towner*, 16 N. B. R. 285; 4 *Dill.* 165; 5 *Cent. Law J.* 206; *Fed. Cas.* 17089.) In an action by the purchaser at an assignee's sale to recover possession, the two years' limitation cannot be pleaded. (*Steele v. Moody*, 16 N. B. R. 558.) And where an assignee files a bill in equity asking to have a mortgage on real estate owned by the bankrupt declared void, and it is so declared, and four years later the defendant files a bill of review, the assignee cannot plead the statute of limitations, as the bill of review is not a suit within the meaning of the limitation section of the bankrupt law. (*Wilt v. Stickney, Ass.*, 15 N. B. R. 23; 5 *Amer. Law Rec.* 630; *Fed. Cas.* 17854.)

**Sec. 12. Compositions, when confirmed.**—*a.* A bankrupt may offer terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

The right of composition provided by this section is mainly in the interest of the honest bankrupt and permits him to compromise claims of his creditors. Unless waived, at least ten days' notice by mail of all hearings upon application for the confirmation of compositions must be given. (Sec. 58*a*.) The confirmation of a composition discharges a bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge (sec. 14*c*), and re-vests him with the title to his property. (Sec. 70*f*.) Questions arising out of the application of bankrupts for compositions must be heard by courts of bankruptcy and not by referees. (Sec. 38—4.) No provision analogous to this section appears in the act of 1867, but one is found in the act of June 22, 1874 (18 *St. L.* 182, § 17).

**Petition of debtor for composition.**— Upon filing of a petition by a debtor for a composition, the court will direct register to call a meeting of creditors, and issue notices therefor. (*In re Spades*, *In re Muir and Foley*, 13 N. B. R. 72; 6 *Biss.* 448; 8 *Chi. Leg. News*, 33; *Fed. Cas.* 13196.) And where petition in bankruptcy was filed alleging sufficient facts to



show jurisdiction, it was held that the court had jurisdiction to approve a composition. (In re Wronkow et al., 18 N. B. R. 81; 26 Pittsb. Leg. T. 2; Fed. Cas. 18105.) Under the amendment of the act of 1867, although verification of petition is defective, a case is pending, and defect is waived if debtor calls a meeting for composition. (Ex parte Jewett, In re Morris, 11 N. B. R. 443; 2 Lowell, 393; 12 N. B. R. 170; Fed. Cas. 7303.)

**First creditors' meeting.**—At the first meeting a creditor presented himself and filed proof of claim. He was not present at the session when the vote was taken on a composition. It was held that he was to be counted as voting against the resolution. (In re Richmond et al., 18 N. B. R. 863; Fed. Cas. 11798.)

**Examination of bankrupts.** See EVIDENCE, sec. 21, post, p. 173.

**The statement or schedules.**—In statement of composition, the statement should conform to schedule in bankruptcy (In re Haskell, 11 N. B. R. 164; 1 Cent. Law J. 531; Fed. Cas. 6192); but if the bankrupt in composition understates one debt, but not intentionally (Beebe v. Pyle, 18 N. B. R. 163), or has omitted a claim which he believes on advice of counsel to be worthless (In re Reiman et al., 13 N. B. R. 128; 12 Blatchf. 563; Fed. Cas. 11675), such mistake or omission will not avoid composition; nor is composition rendered void by the omission of an asset from the statement, when such omission was without fraud and with knowledge of the creditors. The testimony under oath of debtor at meeting of creditors is considered as part of his statement (In re Reiman et al., 13 N. B. R. 128; 12 Blatchf. 563; Fed. Cas. 11675); also a mistake without fraud, made by debtor in statement of amount due creditor, will not vitiate composition (Ex parte Trafton, In re Trafton, 14 N. B. R. 507; 2 Lowell, 505; Fed. Cas. 14133); and the fact also that schedules stated the real estate of the debtor as of unknown value is not a good objection to a composition. (In re Welles, 18 N. B. R. 525; Fed. Cas. 17377.)

**Rights of litigating creditors.**—Attaching creditors have no right to participate in a composition meeting (In re Shields, 15 N. B. R. 533; 5 Dill 588; 4 Cent. Law J. 557; 24 Pittsb. Leg. J. 190; Fed. Cas. 12784), unless they should first relinquish their security (In re Scott, Collins & Co., 15 N. B. R. 73; 4 Cent. Law J. 39; Fed. Cas. 12519); but when the debtor files petition in bankruptcy and also for composition and is not adjudicated, and a creditor begins suit before composition approved, the debtor is not entitled to restrain creditor. (In re Tift, 18 N. B. R. 78; Fed. Cas. 14081.)

**b. An application for the confirmation of a composition** may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims,

and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

**Confirmation of composition.**—Upon the adoption of a resolution of composition, a reasonable time may be given in which to secure the additional signatures necessary to confirm it (In re Spades, In re Muir and Foley, 13 N. B. R. 72; 6 Biss. 448; 8 Chi. Leg. News, 33; Fed. Cas. 13196), and delay in obtaining requisite signatures, unaccompanied by laches, will not defeat resolution (In re Cavan et al., 19 N. B. R. 303; Fed. Cas. 2528); but the creditors affixing signatures to the resolution of composition need not have been present at the creditors' meeting (In re Scott, Collins & Co., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519); but their names must have been attached at or before the hearing. (In re Scott, Collins & Co., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.) A resolution of composition which provides that the payment shall be guaranteed by a satisfactory bond to committee of creditors may be confirmed. (In re Lewis et al., 14 N. B. R. 144; Fed. Cas. 8314.) A creditor is not bound to accede to compromise, nor is he legally, because he refuses to unite with others, nor morally censurable, if his refusal proceeds from a want of confidence in the debtor (Bean v. Brookmire & Rankin, 7 N. B. R. 568; 2 Dill. 108; 5 Chi. Leg. News, 314; 2 Amer. Law Rec. 222; 7 West. Jur. 324; Fed. Cas. 1170); but a minority of creditors will not be permitted to defeat a proposed composition because, if defeated, some special benefit will accrue to them. (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.)

**Minority of creditors.**—It must appear that wrong has been done minority creditors by the vote of the majority on composition before the court will interfere (In re Wronkow et al., 18 N. B. R. 81; 26 Pittsb. Leg. J. 2; Fed. Cas. 18105); and the determination of the court, that a proper proportion of the creditors have confirmed composition, cannot be impeached in a collateral action. (Smith et al. v. Engle et al., 14 N. B. R. 481.)

**Proof of claim.**—It has been held that the form of oath prescribed for proving debts in bankruptcy need not be followed in proofs of claim for composition. (In re Morris, 12 N. B. R. 170.) See also sec. 57.

**Qualified votes at composition meeting.**—Only those who prove their claims can take part or vote (In re Keller et al., 1 N. B. R. 331; Fed. Cas. 7654; In re Matthews et al., 17 N. B. R. 225; Fed. Cas. 9274); but in involuntary proceedings the creditors are not bound to prove anew (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519), although creditors who have not proved have been permitted to intervene

in petition for adjudication and act thereon (In re Bryce et al., 18 N. B. R. 287; Fed. Cas. 2069); and "creditor" means all whose debts are provable in bankruptcy. (In re Trafton, 14 N. B. R. 507; 2 Lowell, 505; Fed. Cas. 14183.) See also sec. 1—9.

**Is it necessary to pay in money.**—The law is not violated where composition agreement provides for deferred payments. (In re Reiman et al., 11 N. B. R. 21; 7 Ben. 455; Fed. Cas. 11673.) Notes are given only as evidence of security (In re McNab & Hamlin Mfg. Co., 18 N. B. R. 388; Fed. Cas. 8906), and time notes will make a valid composition. (In re Hurst, 13 N. B. R. 455; 1 Flip. 462; 8 Chi. Leg. News, 147; 3 Cent. Law J. 78; Fed. Cas. 6925.) If delay in paying notes is occasioned by legal difficulties, it will not work injury to right of bankrupt as to creditors who have been paid (In re Kohlsaat et al., 18 N. B. R. 570; Fed. Cas. 7018), and such a composition is not inconsistent with a statute that payment must be made in "money" (In re Reiman et al., 13 N. B. R. 128; 12 Blatchf. 562; Fed. Cas. 11675); but a composition deed that provides that deferred payments are to be evidenced by notes, "to be satisfactorily indorsed," is too indefinite and void. (In re Reiman et al., 11 N. B. R. 21; 7 Ben. 455; Fed. Cas. 11673.)

An objection was made to deferred composition payments and return of property to bankrupts on the ground that they were not to be trusted, and objection was sustained. (In re Bloch et al., 18 N. B. R. 328; Fed. Cas. 1551.) A resolution proposing composition, to be paid within thirty days after resolution, upon condition that all property of bankrupt be surrendered and all suits discontinued, is not improper (In re Cavan et al., 19 N. B. R. 808; Fed. Cas. 2528); but a composition that provided that property of bankrupt should be surrendered to him by an assignee, on delivery of notes, was held nugatory as to right of creditors under assignment. (In re Hyman et al., 18 N. B. R. 299; Fed. Cas. 6985.) Failure of bankrupt to perform a composition according to its terms does not empower a creditor to disregard the proceedings and sue for his debt. (In re Bayly et al., 19 N. B. R. 73; 26 Pittsb. Leg. J. 172; Fed. Cas. 1144.)

**Secured creditors in case of compositions.**—A composition is not uncertain because payment is not secured (In re Wilson et al., 18 N. B. R. 300; Fed. Cas. 17785); and where creditor considers himself fully secured, but is not, he cannot be counted as a creditor to make majority (In re Snelling, 19 N. B. R. 120; Fed. Cas. 13140); and creditor who is secured, and who takes no part in proceedings in composition though present, is entitled to agreed percentage on his unpaid balance after exhausting security. (Paret v. Ticknor et al., 16 N. B. R. 315; 4 Dill. 111; 5 Cent. Law J. 328; Fed. Cas. 10711.) If all creditors are secured on realty, a creditor's levy on personalty of bankrupt is at his own risk. (In re Lytle & Co., 14 N. B. R. 457; 11 Phila. 523; 3 N. Y. Weekly Dig. 803; 5 Amer. Law Rec. 306; 9 Chi. Leg. News, 18; 1 Cin. Law Bul. 246; 24 Pittsb. Leg. J. 14; Fed. Cas. 8650.)

**Liens and attachments.**—After filing petition of debtor, creditor cannot acquire a lien (In re Tift, 19 N. B. R. 201; Fed. Cas. 14034); but ma-

terial-man can have a lien on vessel though he joined in composition. (The "Home," 18 N. B. R. 557; Fed. Cas. 6657.) Attachment within four months before proceedings in bankruptcy will fail (Miller v. Mackenzie et al., 18 N. B. R. 496); but a creditor may have his security valued and come in for the difference. (The "Home," 18 N. B. R. 557; Fed. Cas. 6657.)

An attachment against debtor was not dissolved by composition, there being no adjudication (In re Shields, 15 N. B. R. 532; 24 Pittsb. Leg. J. 190; 4 Dill. 588; 4 Cent. Law J. 557; Fed. Cas. 12784); and creditor's money cannot be attached when payable under composition. (In re Kohlsaatt et al., 18 N. B. R. 570; Fed. Cas. 7918.)

**Assignee and set-off.**—Under the act of 1867 it was held that the Bankruptcy Act, in authorizing a composition before adjudication, contemplated that it shall be made without appointment of an assignee, and without requiring debtor to surrender his assets. (In re Van Auken et al., 14 N. B. R. 425; Fed. Cas. 16828.) The bankrupt in a composition stands, as to set-off, in the position of an assignee, if none has been appointed. (Ex parte Howard Nat. Bank, 18 N. B. R. 420; Fed. Cas. 6764.) A creditor who receives a composition from his bankrupt debtor, with knowledge of all the facts, is not entitled to have a set-off enforced which he neglected to assert when the composition was made. (Hunt v. Holmes, 16 N. B. R. 101; Fed. Cas. 6890.)

**Double security.**—Holders of a note who took no part in composition proceedings of indorsers were not bound, and could recover from indorsers, the maker not paying. (Smith et al. v. Krauskopf et al., 18 N. B. R. 6.)

c. A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

Unless waived, at least ten days' notice must be given to creditors, by mail, of all hearings upon applications for confirmation of compositions (sec. 58a); and where objection is made to the confirmation, the creditor is required to file a specification in writing of the ground of his opposition. (Orders XXXII.)

**Hearing upon confirmation of composition.**—None but unsecured creditors should be heard at the hearing for ratification of composition, for which due notice was given. (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.) Confirmation need not be made at a meeting. (In re Spillman, 13 N. B. R. 214; 8 Chi. Leg. News, 110; 23 Pittsb. Leg. J. 87; Fed. Cas. 13212.) At confirmation meeting objection to vote of creditor for first time is too late. (In re Bloch et al., 18 N. B. R. 328; Fed. Cas. 1551.) Finally, it is only necessary to record decree containing resolution (Smith et al. v. Bernhard et al., 14 N. B. R. 481); and if a

creditor fails to act on composition, his non-action is equivalent to a positive vote against what the debtor wants. (In re Lissberger, 18 N. B. R. 280; Fed. Cas. 8384.)

**Powers of register at meetings.**—His report must be taken to be true. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.) He has power to conduct inquiries and adjourn meetings. (In re Proby, 17 N. B. R. 175; 12 Amer. Law Rev. 596; 17 Alb. Law J. 167; Fed. Cas. 11439.) To examine a disputed claim and report thereon. (In re Keller et al., 18 N. B. R. 331; Fed. Cas. 7654.) But court may re-open questions in regard to register's rulings on all points. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.)

**Objections to confirmation of composition.**—It is the duty of the court to examine objections of minority fully as to requisite number. (In re Keiler, 18 N. B. R. 36; 10 Chi. Leg. News, 299; Fed. Cas. 7648.) Objection to the effect that a corporation was not entitled to privileges of composition was held not good. (In re Weber Furn. Co., 18 N. B. R. 529; Fed. Cas. 17330.) So with an objection that property in name of bankrupt wife should have been included in schedules. (In re Wells, 18 N. B. R. 525; Fed. Cas. 17377.) Also general objection that the estate could pay more than the composition. (Id.) So with objection that debtor paid more in composition than his estate would pay in bankruptcy. (In re Snelling, 19 N. B. R. 120; Fed. Cas. 13140.) And objection that one debtor was excused from examination on account of illness was held to be frivolous. (In re Wilson et al., 18 N. B. R. 800; Fed. Cas. 17785.) But confirmation of composition was refused a corporation where trustees were to leave estate in hands of its president, who was a defaulter to it and not safe to trust. (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.) At the hearing on a resolution of confirmation, objections as to the passage of the resolutions and as to what is for the best interest of the parties can be presented. (Id.) A composition of five per cent. will be sustained where there is no probability of dividend through an assignee and the parties are acting in good faith. (In re Odell et al., 16 N. B. R. 501; 9 Ben. 247; Fed. Cas. 10427.)

**d. The judge shall confirm a composition if satisfied that** (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

A certified copy of an order confirming a composition is evidence of the jurisdiction of the court, the regularity of the proceedings and the fact that the order was made (sec. 21f), and constitutes evidence of the revesting of the title of his property in the bankrupt, and, if recorded,

shall impart the same notice that a deed from the trustee to the bankrupt, if recorded, would impart. (Sec. 21*g*.)

**Best interests of creditors.**—The fact that there is no security for payment of composition notes is to be considered in determining whether the composition is for the best interests of all concerned (In re Wilson et al., 18 N. B. R. 300; Fed. Cas. 17785); another such fact is that debtor proposes advance in per cent. of composition (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519); another such fact is that any composition which is satisfactory to requisite majority is allowed by statute (In re Purcell, 18 N. B. R. 447; Fed. Cas. 11470); but composition clearly against best interests of all concerned will not be confirmed. (In re Weber Furn. Co., 13 N. B. R. 529; Fed. Cas. 17330.) Either party may furnish testimony on the question whether the composition is for the best interest of all, at the second meeting (In re Keller et al., 18 N. B. R. 331; Fed. Cas. 7654); and unless specific errors on a composition can be pointed out, the question of composition being to the best interests of the creditors will not be inquired into by an appellate court. (In re Wronkow, 18 N. B. R. 81; 26 Pittsb. Leg. T. 2; Fed. Cas. 18105.)

**Frauds or omissions preventing confirmation.**—It is the duty of the court to entertain applications to correct mistakes, expose and punish fraud or improper practice in composition. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.) It is fraud for a creditor who has received payment in full to sign agreement with other creditors to take seventy cents in future. (Bean v. Brookmire et al., 7 N. B. R. 568; 2 Dill. 108; 6 Am. Law T. Rep. 418; 7 West. Jur. 324; Fed. Cas. 1170.) It is a fraud for a partner who, after composition, procures assignment of claims to a relative, and then institutes proceedings to vacate and to put his firm into bankruptcy (In re Hamlin et al., 16 N. B. R. 522; 8 Biss. 122; 10 Chi. Leg. News, 131; Fed. Cas. 5994); also where agent in composition obtains same by false representations (Elfeldt v. Snow, 6 N. B. R. 57; 2 Sawy. 94; Fed. Cas. 4342); also if one creditor exacts advantage not known or enjoyed by the other for uniting in composition (Bean v. Brookmire, 7 N. B. R. 568; 2 Dill. 108; 6 Amer. Law T. Rep. 418; 7 West. Jur. 324; Fed. Cas. 1170); but preference creditor is liable to assignee for amount of advantage over others; and if he pays, assignee can prove his original claim. (Brookmire et al. v. Bean, Ass., 12 N. B. R. 217.)

**Fraud in creation of debt.**—A composition includes and binds debts created by fraud (In re Shafer et al., 17 N. B. R. 116; 1 N. J. Law J. 66; Fed. Cas. 12695); and a debt so created is discharged by a composition in which creditor participates. (Wells v. Lamprey, 16 N. B. R. 205.) A creditor has no moral right to oppose a composition, and, if such opposition is bought off, it must be presumed good ground for opposition existed. (In re Sawyer, 14 N. B. R. 241; 2 Lowell, 475; 3 N. Y. Weekly Dig. 143; Fed. Cas. 12395.)

**Lack of good faith and promises of advantage preventing confirmation.**—There is lack of good faith in giving creditor secret benefit and

advantage to induce him to sign composition, and makes composition voidable (In re Sawyer, 14 N. B. R. 241; 2 Lowell, 475; Fed. Cas. 12395); and so with the giving of secret preferences; and if found out, composition will not be confirmed unless all creditors are treated alike. (In re Jacobs, 18 N. B. R. 48; Fed. Cas. 7159.) In a secret agreement, whereby signing creditors were to have their claims settled at expense of the others, composition was denied (In re Vetterlein, 6 N. B. R. 518; 5 Ben. 571; Fed. Cas. 16928); but where there was a discrepancy between compromise offered and the apparent value of debtor's property, and other *indicia* of fraud, the court should not refuse to record the composition without notice to the parties concerned to bring before them all the facts. It will take into account the relations of creditors favoring the compromise in deciding motion to confirm; and also the relative number of creditors whose opinions were in favor of the resolution. (In re Weber Furn. Co., 13 N. B. R. 529; Fed. Cas. 17830.)

When confirmed composition stands.—A composition will not be set aside because bankrupt had failed to comply with its terms (In re Ewing et al., 17 N. B. R. 109; Fed. Cas. 4588); nor on account of inadequacy in price brought at a sale. Bankrupt is a liberty to deal with his assets as he pleases if fraud was not practiced. (In re Shaw et al., 19 N. B. R. 512; Fed. Cas. 12716.) Refusal to join by a partner in carrying out the proceedings will not avoid it. (In re Henry et al., 17 N. B. R. 463; 9 Ben. 449; Fed. Cas. 6370.)

a. Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided.

The confirmation of a composition discharges a bankrupt from his debts other than those agreed to be paid by the terms of the composition and those not affected by a discharge (sec. 14, c), and reverts him with the title to his property. (Sec. 70, f.)

After confirmation of composition — Debtor's property.—Creditors cease to have any interest in estate of debtor after confirmation, and assignee is to pay balance into his hands (In re August et al., 19 N. B. R. 161; Fed. Cas. 645); and if there is no provision for dispossession of property, the debtor retains same subject to summary order of court (In re Reiman et al., 11 N. B. R. 21; 7 Ben. 455; Fed. Cas. 11673); so if a composition resolution gives property and books back to debtor, the creditor will not be permitted to undo what was done with his consent. (In re Rodger et al., 18 N. B. R. 831; Fed. Cas. 11992.) A debtor's receiver has no claim on rents and profits of debtor's land, it being his after-acquired

property under composition (*Conover et al. v. Dumahaut et al.*, 17 N. B. R. 558); and the principal element in determining the question whether the debtor should be allowed to keep his property pending discharge is his personal business character, the composition being otherwise just. (*In re Wilson et al.*, 18 N. B. R. 300; Fed. Cas. 17785.)

**Discharge.** See sec. 14, *c.*

**Discharge not necessary.**—Composition obviates discharge (*In re Becket*, 12 N. B. R. 201; 2 Woods, 173; 7 Chi. Leg. News, 243; Fed. Cas. 1210); and fact that discharge has been refused is not absolute bar to composition. (*In re Odell et al.*, 16 N. B. R. 501; 9 Ben. 247; Fed. Cas. 10427.)

**Debtor must pay composition.**—Debtor cannot add to provisions of composition by demanding a discontinuance and surrender of property before percent. is paid (*In re McKeon*, 11 N. B. R. 182; 7 Ben. 513; 3 Amer. Law R. 611; 11 Alb. L. J. 7; Fed. Cas. 8358); and delivery of notes in composition does not of itself cancel debt (*In re Reiman et al.*, 13 N. B. R. 123; 12 Blatchf. 562; Fed. Cas. 11675. See also *In re Hurst*, 13 N. B. R. 455; 1 Flip. 462; 8 Chi. Leg. News, 147; 3 Cent. Law J. 78; Fed. Cas. 6925); and if notes are not paid creditor can sue on the notes on original debt (*In re Leipziger*, 18 N. B. R. 264); but the tender of money according to composition is equivalent to payment. (*In re Hinsdale*, 16 N. B. R. 550; 9 Ben. 91; Fed. Cas. 6526.)

**Litigation after composition effected.**—The court cannot be asked to suspend the right of creditors to receive composition by injunction unless there is a lien upon the fund (*In re Kohlsaat et al.*, 18 N. B. R. 570; Fed. Cas. 7918); and injunction will not be allowed if debtor fails to plead the composition (*In re Tooker*, 14 N. B. R. 35; 8 Ben. 390; 23 Pittsb. Leg. J. 185, 196; Fed. Cas. 14096); and where composition has been complied with, an injunction restraining suit in state court is proper. (*In re Shafer et al.*, 17 N. B. R. 116; N. J. Law J. 66; Fed. Cas. 12695.)

**Attachments dissolved by compositions.**—Composition will dissolve attachment made within four months of commencement of proceedings (*Smith, Stebbins & Co. v. Engle et al.*, 14 N. B. R. 481); but resolution of composition without first meeting of creditors does not dissolve attachment made within four months of such commencement (*In re Clapp & Co.*, 14 N. B. R. 191; 2 Lowell, 468; Fed. Cas. 2785). as confirmation of resolution of composition does not give legal force to what the resolution vainly attempts. (*In re Hyman et al.*, 18 N. B. R. 299; Fed. Cas. 6985.)

**Final distribution and disposition.**—A court has no power to imprison a creditor for refusing to receive money on finality of composition (*In re Hinsdale*, 16 N. B. R. 550; 6 Ben. 91; Fed. Cas. 6526); and final order in composition is not disposition of bankruptcy proceedings, and does not, without further order of court, place at disposal of bankrupt moneys belonging to estate held by sheriff. (*In re Mickel et al.*, 19 N. B. R. 374; Fed. Cas. 9529.)



**Titles to property after composition.**—Court has no power to determine titles between debtor and persons not parties (*In re Waltzfelder et al.*, 18 N. B. R. 260; Fed. Cas. 17048), and assignment after failure of composition must be without prejudice to titles acquired by virtue of composition. (*Ex parte Hamlin*, 16 N. B. R. 320; 2 Lowell, 571; 5 Cent. Law J. 281; Fed. Cas. 5993.)

**Sec. 13. Compositions, when set aside.**—*a.* The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

While compositions induced through fraud may be set aside under this section, the property acquired by the bankrupt, in addition to his estate at the time the composition was confirmed, must be applied to the payment in full of claims of creditors for property sold to him on credit in good faith while such composition was in force, and the residue, if any, must be applied to the payment of the debts which were owing at the time of the adjudication. (Sec. 64c.) Whenever a composition is set aside the court must reinstate the case (sec. 2—9), and the trustee, upon his appointment and qualification, is vested with the title to all of the bankrupt's property, as of the date of the final decree setting aside the composition. (Sec. 70d.) A certified copy of the order setting a confirmation aside is evidence of the jurisdiction of the court, the regularity of the proceedings and of the fact that the order was made. (Sec. 21f.)

**Compositions, when set aside.**—Bankrupt offered a composition, which was accepted and certain of the creditors paid. On application to set it aside and appoint an assignee, the appointment was made, but it was held that rights acquired under the composition were not to be prejudiced. (*Ex parte Hamlin*, 16 N. B. R. 320; 2 Lowell, 571; 5 Cent. Law J. 281; Fed. Cas. 5993.)

**When not.**—The court refused to set a composition aside where it appeared that the creditors as well as the bankrupts would be benefited by it (*In re Allen et al.*, 17 N. B. R. 157; 17 Alb. Law J. 170; 20 Pittsb. Leg. J. 148; 6 N. Y. Weekly Dig. 48; Fed. Cas. 210); and the court will not set aside a composition, two years after final order, on account of laches. (*In re Herman et al.*, 17 N. B. R. 440; 9 Ben. 436; Fed. Cas. 6405.)

**Who may not vacate.**—On motion to vacate composition it was held that creditors who have not proved debts cannot take part in composi-

tion (In re Bryce et al., 19 N. B. R. 287; Fed. Cas. 2069), and such creditors as had accepted the composition were not entitled to vote for assignee. (Ex parte Hamlin, 16 N. B. R. 320; 2 Lowell, 571; 5 Cent. Law J. 281; Fed. Cas. 5993; In re Herman et al., 17 N. B. R. 440; 9 Ben. 436; Fed. Cas. 6405.)

**Set aside on practice of fraud.**—Creditors are not bound by a composition deed fraudulently procured (Elfeldt v. Snow, 6 N. B. R. 57; 2 Sawy. 94; Fed. Cas. 4352); but see *contra*: A debt released by composition is not revived by payment in full of other old debts which could not have been enforced, although complaining creditor consented to composition with understanding "that none of the other creditors should receive better terms." (In re Sturgis et al., 16 N. B. R. 304; 8 Biss. 79; 10 Chi. Leg. News, 33; Fed. Cas. 13565.)

**Petition to review payment.**—Where notes for composition fall due pending the hearing on a petition to review, the amount of the note of petitioner should be paid into court in order to relieve the bankrupt (In re Reynolds, 16 N. B. R. 176; 5 N. Y. Wkly. Dig. 51; Fed. Cas. 11725); but the holder of the note given for deferred payment in composition which falls due pending the hearing of a petition for review, who does not appear to receive payment in pursuance of notice, is entitled, upon subsequent refusal, to a summary order. (In re Reynolds, 16 N. B. R. 176; 5 N. Y. Wkly. Dig. 51; Fed. Cas. 11725.)

**Sec. 14. Discharges, when granted.**—*a.* Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

[Act of 1867. SEC. 29. . . . That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days, and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts. . . .]

By a discharge is meant the release of a bankrupt from all his debts which are provable in bankruptcy, except such as are excepted by this act. (Sec. 1—12.) The petition therefor must state concisely the proceedings in the case and the acts of the bankrupt. (Orders XXXI.) The liability of a co-debtor, guarantor or surety for a bankrupt is not altered

by the discharge of such bankrupt. (Sec. 16.) For the debts not affected by a discharge, see sec. 17. At least ten days' notice must be given to the creditors, by mail, of all hearings upon applications for the discharge of bankrupts (sec. 58a), which hearing must be before the judge. The court of bankruptcy alone is authorized to discharge or refuse to discharge bankrupts (2—12), and from a judgment granting or refusing a discharge an appeal lies to the circuit court of appeals of the United States and to the supreme court of the territories. (Sec. 25.)

**The filing of the application for discharge.**—Where a bankrupt who was adjudicated on his own petition makes application for a discharge more than two years after the date of the adjudication, the reason given for not making an earlier application being that, although he had diligently tried, he had been unable to get the consent in writing of a majority of his creditors, is not sufficient. (In re Lowenstein, 13 N. B. R. 479; 3 Dill. 145; 3 Cent. Law J. 82; 33 Leg. Int. 360; Fed. Cas. 8573.) But the refusal of an application for discharge from bankruptcy on the ground that the application was not made within one year from the date of adjudication is not a bar to the filing of a new petition. (In re Farrell, 5 N. B. R. 125; Fed. Cas. 4690.)

Where a petition for discharge is unseasonably made, and, at the proper time, another petition is filed, the proceedings under the first petition are abandoned by the filing of the second, and the court will have jurisdiction. (In re White et al., 18 N. B. R. 107; Fed. Cas. 17533.) It will also have jurisdiction where the first petition is withdrawn, on objection thereto by creditors. (In re Svenson, 19 N. B. R. 229; 11 Chi. Leg. News, 367; 8 Reporter, 261; Fed. Cas. 18659.)

The application for a discharge must be made, however, before the administration of the estate is completed and the assignee discharged. (In re Brightman et al., 15 N. B. R. 218; 14 Blatchf. 180; Fed. Cas. 1878; In re Cross, 16 N. B. R. 294; 25 Pittsb. Leg. J. 35; 5 Cent. Law J. 313; Fed. Cas. 3427.)

An involuntary bankrupt is entitled to a discharge under the same circumstances which would justify the discharge of a voluntary bankrupt. (In re Clark, 3 N. B. R. 3; 2 Biss. 73; 1 Chi. Leg. News, 118; Fed. Cas. 2800; In re Bunster, 5 N. B. R. 82; 5 Ben. 242; 41 How. Pr. 406; Fed. Cas. 2186.)

A voluntary bankrupt who has contracted new debts since the filing of a petition in bankruptcy under which a discharge was refused may file a new petition. (In re Drisco, 18 N. B. R. 112; 2 Lowell, 490; Fed. Cas. 4090.)

b. The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate

the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

[Act of 1867. SEC. 29. . . . the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and by publication, . . . to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writing relating thereto, or if he has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or if, within four months before the commencement of such proceedings, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or if, having acknowledged that any person has proved such false and fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if,

being a merchant or tradesman, he has not, subsequently to the passage of this act, kept proper books of account, or if he, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings by any pecuniary consideration or obligation; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act.

SEC. 30. . . . That no person who shall have been discharged under this act, and shall afterwards become bankrupt, on his own application shall be again entitled to a discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three-fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SEC. 31. . . . That any creditor opposing the discharge of any bankrupt may file a specification in writing of the grounds of his opposition, and the court may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

SEC. 32. . . . That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court [here follows certificate].

SEC. 33. . . . And in all proceedings in bankruptcy . . . no discharge shall be granted to a debtor whose assets do not pay fifty per centum of the claims against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claims

is filed in the case at or before the time of application for discharge.]

A certified copy of the order setting aside a discharge, not revoked, is evidence of the jurisdiction of the court, the regularity of the proceedings and of the fact that the order was made. (Sec. 21*f*.) The creditor opposing a discharge must file a specification of his opposition. (Orders XXXII.)

**Who may oppose a discharge.**—The following may oppose the discharge: Any creditor with a provable debt (In re Murdock, 3 N. B. R. 36; 1 Lowell, 362; Fed. Cas. 9939); a creditor who has proved his debt (In re Sheppard, 1 N. B. R. 115; 17 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; Fed. Cas. 12753); the holder of a negotiable note assigned for value after the filing of the petition (In re Murdock, 3 N. B. R. 36; 1 Lowell, 362; Fed. Cas. 9939); a creditor who recovers a judgment pending proceedings in bankruptcy (In re Stansfield, 16 N. B. R. 268; 4 Sawy. 334; Fed. Cas. 13294); any person who has a pecuniary interest, including creditors who have not proved their debts, when such pecuniary interest is satisfactorily shown to the court. (In re Boutelle, 2 N. B. R. 51; 15 Pittsb. Leg. J. 616; 1 Chi. Leg. News, 30; Fed. Cas. 1705.) Under the act of 1867 it was held that when, through inadvertence, creditors who have filed notices of opposition to discharge fail to file specifications within ten days after the return day of the order to show cause, they may be permitted to file the same *nunc pro tunc*. (In re Grefe, 2 N. B. R. 106; Fed. Cas. 5794.) Where the proceedings upon an order to show cause in opposition to discharge are adjourned, any creditor entitled to show cause may do so on the day to which the proceedings were adjourned, and within ten days thereafter may file his specifications. (In re Tallman, 1 N. B. R. 145; 2 Ben. 404; Fed. Cas. 13470.) The district court may, in its discretion, allow a creditor to enter his appearance and file specifications in opposition to a discharge, although the time for entering an appearance in opposition thereto has expired. (In re Levin, 14 N. B. R. 385; 7 Biss. 231; Fed. Cas. 8291.) A creditor who has given his assent to the bankrupt's discharge in writing, no fraud in procuring such assent being shown, and other creditors having assented, each presumptively being influenced by the act of the others, is not entitled, on the date fixed for the hearing, to withdraw his assent. (In re Brent, 8 N. B. R. 444; 2 Dill. 129; Fed. Cas. 1833.) Time may be given to other creditors to appear and oppose a discharge, when specifications have been overruled on grounds which apply to the opposing creditor individually. (In re Antisdel, 18 N. B. R. 289; Fed. Cas. 490.)

**Who may not oppose a discharge.**—The following may not oppose a discharge: A creditor who has not proved his claim (In re Burk, 3 N. B. R. 76; Deady, 425; 2 Amer. Law T. Rep. Bankr. 45; Fed. Cas. 2156); an attorney in whose power the concluding words are, "and with like power to attend and vote at any other meeting or meetings of creditors,

or sitting or sittings of the court, which may be holden therein, for any of the purposes aforesaid, or for the declaration of dividends, or for any other purpose in my interest whatever." (*Creditors v. Williams*, 4 N. B. R. 187; *Fed. Cas.* 8879.) Where the same persons are members of two firms, one of which has proved a claim against the bankrupt and the other has not, the latter firm has no standing to appear in opposition to the discharge. (*In re Palmer*, 8 N. B. R. 77; *Fed. Cas.* 10682.) Creditors will not be allowed to intervene, after the return day, to prosecute specifications filed by a creditor whose claim was stricken out after the filing of the specifications. (*In re McDonald*, 14 N. B. R. 477; 20 *Pittsb. Leg. J.* 42; *Fed. Cas.* 8753.) After the time for the hearing of an application for discharge, a creditor who proves his claim thereafter cannot be heard in opposition to the application, nor can his debt be counted among the claims proved so as to affect the discharge. (*In re Borst*, 11 N. B. R. 96; *Fed. Cas.* 1666.)

**Examination of the bankrupt pending his discharge.**—A bankrupt in attendance at a meeting to show cause against his discharge may be required by the register to submit to an examination upon oath touching his bankruptcy by a creditor. (*In re Brandt*, 2 N. B. R. 76; *Fed. Cas.* 1812.) When abundant opportunity has been afforded for an examination, and it is not done, a new examination will not be given upon the filing of amended specifications in opposition to discharge, especially in the absence of a showing by affidavit. (*In re Isidor & Blumenthal*, 1 N. B. R. 33; 2 *Ben.* 123; *Fed. Cas.* 7105.) The time to examine witnesses does not expire by the bankrupt filing his petition for a discharge. The time to file objections can be kept open by adjourning to any day which may be fixed for showing cause, until a reasonable time has elapsed for the examination of witnesses. (*In re Seckendorf*, 1 N. B. R. 185; 2 *Ben.* 463; 15 *Pittsb. Leg. J.* 450; 1 *Amer. Law T. Rep. Bankr.* 122; *Fed. Cas.* 12600.)

**The discharge of a firm or its members.**—The question of the jurisdiction of the court to make the adjudication should be raised in opposition to the firm's discharge when application is made to have the adjudication set aside. (*In re Penn et al.*, 8 N. B. R. 145; 4 *Ben.* 99; *Fed. Cas.* 10926.) A member of a firm actually existing and having assets cannot be adjudicated a bankrupt and discharged from his liabilities individually and as a member of the firm unless his copartners are joined with him. (*In re Winkens*, 2 N. B. R. 118; 1 *Chi. Leg. News*, 163; 3 *Amer. Law T. Rep. Bankr.* 53; *Fed. Cas.* 17875.) Joint creditors may be admitted to prove under separate commissions for the purpose of assenting to or dissenting from the discharge, but not to receive until after the separate creditors are paid in full. The exceptions are, where the joint creditor is the petitioning creditor under a separate flat, where there is no joint estate and no solvent partner, and where there are no separate debts. (*In re Byrne*, 1 N. B. R. 122; 7 *Amer. Law Reg. (N. S.)*

499; 1 Amer. Law T. Rep. Bankr. 122; 15 Pittsb. Leg. J. 315; Fed. Cas. 2370.) One cannot be discharged from his liabilities as a member of a firm unless the debts and assets of the firm are considered and adjudicated by the court. (In re Noonan, 10 N. B. R. 330; 5 Chi. Leg. News, 557; 30 Leg. Int. 425; 21 Pittsb. Leg. J. 73; Fed. Cas. 10292; Corey et al. v. Perry et al., 17 N. B. R. 147.)

**Proceedings in opposition to discharge.**—It is discretionary with the court, when creditors opposing a discharge file a specification in writing of the grounds of such opposition, to postpone the question of fact, to be tried at a stated session of the court. (Coit v. Robinson et al., 9 N. B. R. 289; 19 Wall. 274.) There is no provision in the Bankrupt Act for a jury trial on the question of discharge. Where a creditor wishes to avoid the discharge on the ground that his claim was not included in the defendant's schedule of indebtedness, he must attack the discharge on the ground of fraud in the court where granted. (Symonds v. Barnes, 6 N. B. R. 377.) Where it is objected that the purchaser at an assignee's sale was the attorney for the assignee and thereby incapable of purchasing, such objection must be set up in the bankrupt court and not in a collateral action. (Spilman v. Johnson, 16 N. B. R. 145.)

A bankrupt who has not made a full and complete disclosure of his assets cannot require that creditors opposing his discharge specify objections or abide by specifications which they may have filed. (In re Long, 3 N. B. R. 66; 7 Phila. 578; 26 Leg. Int. 349; Fed. Cas. 8477.)

The proceeding upon the order to show cause why the discharge should not be granted can be, on the return day of the order, adjourned by reason of the adjournment of the examination of the bankrupt. (In re Mawson, 1 N. B. R. 41; 1 Amer. Law T. Rep. Bankr. 46; Fed. Cas. 9320; In re Thompson, 1 N. B. R. 65; 2 Ben. 166; Fed. Cas. 13935.)

**The discharge—In general.**—A bankrupt is not forbidden to procure the assent of a creditor to his discharge, nor is he forbidden to influence the action of a creditor. Under the act of 1867 it was held that the prohibition is against procuring such assent or influencing such action by any pecuniary consideration or obligation (In re Mawson, 1 N. B. R. 115; 2 Ben. 332; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 9318); and this question will not be considered until the filing of specifications in opposition thereto. (In re Mawson, 1 N. B. R. 43; 2 Ben. 123; Fed. Cas. 9317.) Concealment of estate, to furnish grounds for opposing the discharge, must be wilful and coupled with an intent to deceive. (In re Sidle, 2 N. B. R. 77; Fed. Cas. 12844.) The question whether a bankrupt has been guilty of fraud, or committed such act as would prevent his discharge, must be postponed until the hearing of the application therefor. (In re Brisco, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 1886.)

A bankrupt must, in a given proceeding, be discharged from all his debts or none. (In re Plumb, 17 N. B. R. 76; 9 Ben. 279; Fed. Cas. 11231.)



The bankrupt has an interest in the continuance of proceedings which may result in his final discharge; hence he is entitled to notice of an application for annulling the adjudication in bankruptcy. (In re Bush, 6 N. B. R. 179; 6 West. Jur. 274; Fed. Cas. 2222.)

A suit at law to collect a debt, claim or liability from a bankrupt may be restrained until the application for a discharge has been determined, if made and prosecuted with reasonable diligence; and where the discharge would be a bar to such suit at law the creditor must go into the bankruptcy court and oppose a discharge in the manner prescribed by the bankrupt law. (In re Archenbrow, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 504; In re Rosenberg, 2 N. B. R. 81; 3 Ben. 14; 1 Chi. Leg. News, 103; Fed. Cas. 12054.)

It is not requisite to the constitutionality of a bankrupt act that it must provide for the discharge of all persons subject to its provisions. (In re Cal. Pac. R. R. Co., 11 N. B. R. 193; 8 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2315.)

Creditors acquire no right to proceed in an action against a bankrupt, pending determination of the question of discharge, from the fact that they have not proved their claim in bankruptcy. (In re Schwartz, 15 N. B. R. 330; 14 Blatchf. 196; 52 How. Pr. 518; 15 Alb. Law J. 350; Fed. Cas. 12502; sec. 5106, R. S.)

**When a discharge will be granted.**—Where proper notice has been given to creditors, they are regarded as consenting to a discharge if they make no opposition. (In re Antisdel, 18 N. B. R. 289; Fed. Cas. 480.) The fact that a debt was created by the fraud and embezzlement of the bankrupt, and while acting in a fiduciary capacity, is not valid objection to the discharge, such debts not being thereby discharged. (In re Bashford, 2 N. B. R. 26; Fed. Cas. 1090; In re Rosenfield, 1 N. B. R. 161; 7 Amer. Law Reg. (N. S.) 618; 1 Amer. Law T. Rep. Bankr. 81; Fed. Cas. 12058; In re Clarke, 2 N. B. R. 44; Fed. Cas. 2344; In re Elliott, 2 N. B. R. 44; Fed. Cas. 4391; In re Wright, 2 N. B. R. 57; 36 How. Pr. 167; 2 Ben. 509; Fed. Cas. 18065; In re Doody, 2 N. B. R. 74; Fed. Cas. 3995; In re Stokes, 2 N. B. R. 76; Fed. Cas. 13476; In re Tracy et al., 2 N. B. R. 98; 1 Chi. Leg. News, 123; Fed. Cas. 14124.)

A judgment obtained after the adjudication in bankruptcy creates a new debt that cannot be proved therein, the judgment being a merger, and therefore the judgment creditor cannot oppose the discharge because he has no provable debt, and because the discharge will not bear the judgment. (In re Gallison et al., 5 N. B. R. 353; 2 Lowell, 72; Fed. Cas. 5203.)

A fraudulent conveyance made, or a fraudulent preference given, before the passage of the Bankrupt Act, are neither of them good grounds on which to oppose a discharge (In re Rosenfield, 1 N. B. R. 161; 7 Amer. Law Reg. (N. S.) 618; 1 Amer. Law T. Rep. Bankr. 81; Fed. Cas. 12058); but in such case the bankrupt should not conceal, nor attempt to con-

ceal, the fraud when he asks the benefit of the act. (In re Rainsford, 5 N. B. R. 381; Fed. Cas. 11537.)

When a bankrupt's discharge is opposed on the grounds of false swearing, of attempt to conceal property, and of transfer of a portion to a creditor with intent to give preference, a discharge will be granted when the evidence shows that the bankrupt had no interest therein, and that the transfer was without fraud. (In re Penn et al., 5 N. B. R. 288; Fed. Cas. 10929.)

The fact that a bankrupt paid certain creditors in full shortly before commencement of proceedings is no ground for withholding a discharge, where it is not shown that such payments were intended as preferences (In re Burgess, 3 N. B. R. 47; Fed. Cas. 2153); nor where the payment of a debt is made through inadvertence or under a mistaken sense of duty, and without fraudulent intent (In re Rosenfeld, 2 N. B. R. 49; 1 Amer. Law T. Rep. Bankr. 100; Fed. Cas. 12057; In re Sceley, 19 N. B. R. 1; Fed. Cas. 12628); nor are mere preferences made without contemplation of proceedings in bankruptcy (In re Jones, 13 N. B. R. 286; 2 Lowell, 451; Fed. Cas. 7446); nor is the fact that the bankrupt caused and permitted loss, waste and destruction of his estate and effects, and misspent and misused the same, prior to filing the petition. (In re Rogers, 3 N. B. R. 139; 1 Lowell, 423; Fed. Cas. 12001.) Where, in opposition to a discharge, a creditor sets up the fraudulent transfer by the bankrupt of certain of his property in violation of the act, but on trial the allegations are not proved as a matter of fact, the assignee is not prevented by a decision of the court from suing the transferee of the property. (In re Penn et al., 8 N. B. R. 93; Fed. Cas. 10928.)

The matter will be held *res adjudicata*, and a bank will be estopped from opposing the discharge on the ground that the bankrupt made a fraudulent conveyance to his wife, when it appears that the cashier of the bank had recovered judgment in his own name upon the bank's claim against a debtor, and that he filed a creditor's bill against the bankrupt and his wife asking that the conveyance be set aside, and the bill was dismissed. (In re Antisdell, 18 N. B. R. 289; Fed. Cas. 490.)

The beneficiaries under a general assignment for the benefit of all of his creditors without preference, and who have assented in writing to a substitution of assignees thereunder, are estopped from opposing the discharge of the debtor in bankruptcy on the ground that such assignment was fraudulent. (In re Schuyler, 2 N. B. R. 169; 3 Ben. 200; 16 Pittsb. Leg. J. 94; 2 Amer. Law T. Rep. Bankr. 85; Fed. Cas. 12494.)

A general assignment for the benefit of creditors, without preference, and in good faith, made sixteen days prior to commencement of proceedings in bankruptcy, and pending adverse proceedings by a creditor, is not a bar to a discharge. (In re Pierce et al., 3 N. B. R. 61; 26 Leg. Int. 332; 16 Pittsb. Leg. J. 204; Fed. Cas. 11141.)

The omission of a debtor to have himself adjudged a voluntary bank-

rupt, when his property is attached at the suit of a hostile creditor without his knowledge or consent, is not sufficient to prevent his discharge. (In re Belden, 2 N. B. R. 14; 2 Amer. Law Rev. 771; 15 Pittsb. Leg. J. 547; Fed. Cas. 1240.)

The omission from the schedule of a complete statement of the property owned by the bankrupt is not in itself ground for refusing a discharge (In re Smith, 18 N. B. R. 256; 1 Woods, 478; Fed. Cas. 12995); nor is the omission of names of creditors in the schedule with their knowledge and consent (In re Needham, 2 N. B. R. 124; 1 Lowell, 309; 2 Amer. Law T. Rep. Bankr. 89; 16 Pittsb. Leg. J. 313; 1 Chi. Leg. News, 171; Fed. Cas. 10081); nor is the mere omission of the name of a creditor, unless the omission was wilful and fraudulent. (Payne & Bro. v. Able et al., 4 N. B. R. 67.)

Neither the actual nor alleged residence or place of business of a bankrupt can be directly made the ground of opposition to his discharge. (In re Burk, 3 N. B. R. 76; Deady, 425; 2 Amer. Law T. Rep. Bankr. 45; Fed. Cas. 2156; In re Ives et al., 19 N. B. R. 97; 5 Dill 143; Fed. Cas. 7115.)

A bankrupt court has jurisdiction to grant a discharge, even though there may be creditors who were not regularly brought before it by publication and service of notice. (Thurmond v. Andrews and Wife, 18 N. B. R. 157.)

Failure to publish notice of appointment of assignee is not cause for withholding a discharge. (In re Strachen, 3 N. B. R. 148; In re Littlefield, 3 N. B. R. 13; 1 Lowell, 331; 2 Amer. Law T. 122; 1 Amer. Law T. Rep. Bankr. 164; Fed. Cas. 8398.)

Where it appears that the bankrupt has committed an act that, if properly pleaded, will bar a discharge, the court will not of its own motion refuse a discharge (In re Antidel, 18 N. B. R. 289; Fed. Cas. 490); or where on application for a discharge it appears that the bankrupt had given fraudulent preferences, but no creditors appeared in opposition, the court will not deny a discharge. (In re Clark et al., 19 N. B. R. 301; 36 Leg. Int. 414; Fed. Cas. 2812. For *contra*, see In re Sohoo, 3 N. B. R. 53; Fed. Cas. 18162.)

Where a member of a late copartnership files his individual petition in bankruptcy and inserts therein debts of the copartnership, the schedules showing that there were no partnership assets, and alleging that he was unable to get his late copartner to join in the petition, he is entitled to be discharged of his partnership as well as individual debts, and it is unnecessary that his copartner be made a party to the proceedings. (In re Abbe, 2 N. B. R. 26; 15 Pittsb. Leg. J. 589; Fed. Cas. 4.) The fact that one member of a bankrupt firm did not file a schedule of debts and effects, nor deliver his property into the hands of the assignee, does not affect the right of the other partners to receive a discharge. (In re Scofield et al., 3 N. B. R. 137; Fed. Cas. 12509.) A partner may be bankrupt, while the remaining partners, as individuals, and the firm itself,

may be solvent. The bankrupt partner has an unquestionable right to be discharged from all his debts provable under the act. (In re Frear, 1 N. B. R. 201; 2 Ben. 467; Fed. Cas. 5079; In re R. Stevens, 5 N. B. R. 112; 1 Sawy. 397; 1 Pac. Law Rep. 45; Fed. Cas. 13393.)

Objections to the discharge of the bankrupt on the ground that he has promised certain creditors money to vote for composition cannot be set up against his discharge. (In re Morris et al., 19 N. B. R. 111; 19 Alb. Law J. 281; 36 Leg. Int. 215; 26 Pittsb. Leg. J. 121; Fed. Cas. 9824.) In the absence of fraud, the original adjudication is conclusive on all creditors, and cannot be disputed upon the question of granting a discharge that is opposed on the ground that the petition was filed by collusion between the bankrupt and petitioning creditors. (In re Ordway Bros., 19 N. B. R. 171; 19 Alb. Law T. 482; Fed. Cas. 10552.)

An adjudication of bankruptcy, suffered by default, will not prejudice the bankrupt in his application for a discharge. (In re Lathrop, Luddington & Co., 3 N. B. R. 11; 2 Amer. Law T. 124; Fed. Cas. 8105.)

An act of bankruptcy committed a long time before the passage of the Bankrupt Act is no ground for refusing a discharge. (In re Keefer, 4 N. B. R. 126; 3 Chi. Leg. News. 125; Fed. Cas. 7626.)

A final disposition of a cause in bankruptcy may take place although no application for a discharge has been made and no action of the court had upon the subject. (In re Brightman et al., 15 N. B. R. 213, 215; 14 Blatchf. 130; Fed. Cas. 1878.)

**The specification in opposition to discharge.**—A creditor opposing the discharge of a bankrupt must enter his appearance and file specifications at the time required by law. (In re McVey, 2 N. B. R. 85; 1 Chi. Leg. News, 103; Fed. Cas. 8932.) The statute lays down no time certain within which specifications of discharge are to be filed, but leaves that matter to be regulated by the supreme court, and the rule of court gives a power to enlarge the time (In re Houghton, 10 N. B. R. 337; Fed. Cas. 6730), which has made the limit ten days after the appearance in opposition to the discharge. (Orders XXXII.) On motion, specifications against the bankrupt in opposition to discharge will be stricken out if no appearance be made on order to show cause. (In re Smith et al., 5 N. B. R. 20; Fed. Cas. 12985.) Whenever the objection to a discharge rests on facts, there must be a specification in order that the bankrupt may produce evidence and that there may be a trial of the fact. (In re White et al., 18 N. B. R. 107; Fed. Cas. 17533.) The filing of an opposition to a bankrupt's discharge is the commencement of an individual proceeding on the part of the creditor against the bankrupt (*Creditors v. Williams*, 4 N. B. R. 187; Fed. Cas. 3379), and the burden of proof is on the creditor filing such specifications. (In re Okell, 2 N. B. R. 35; Fed. Cas. 10475; In re Herdic, 19 N. B. R. 285; Fed. Cas. 6463.)

Specifications in opposition to the discharge of a bankrupt which are in vague and general terms are insufficient. (In re Tyrrel, 2 N. B. R. 73;

Fed. Cas. 14314; In re Hill, 1 N. B. R. 42; 2 Ben. 186; 15 Pittsb. Leg. J. 329; Fed. Cas. 6482; In re Beardsley, 1 N. B. R. 52; 1 Amer. Law T. Rep. Bankr. 46; Fed. Cas. 1188; In re Hansen, 2 N. B. R. 75; Fed. Cas. 6039; In re Dreyer, 2 N. B. R. 76; Fed. Cas. 4082; In re McVey, 2 N. B. R. 85; 1 Chi. Leg. News, 108; Fed. Cas. 8982; In re Rosenfield, 1 N. B. R. 161; 7 Amer. Law Reg. (N. S.) 618; 1 Amer. Law T. Rep. Bankr. 81; Fed. Cas. 12058; In re Smith & Bickford, 5 N. B. R. 20; Fed. Cas. 12985.) They must be precise and definite, and as exact as specifications in an indictment. (In re Butterfield, 14 N. B. R. 147; 5 Biss. 120; Fed. Cas. 2247.) They must be of fact, and be distinct, precise and specific, and must not be allegations merely in the language of the Bankrupt Act, or allegations so general as really not to advise the bankrupt what facts he must be prepared to meet and resist. (In re Rathbone, 1 N. B. R. 50; 2 Ben. 138; 15 Pittsb. Law J. 233; 25 Leg. Int. 60; Fed. Cas. 11580.) They must be full, clear and positive, as to time, place and person. (In re J. D. Eidom, 3 N. B. R. 27; Fed. Cas. 4314.) An allegation in a specification in opposition to the discharge of a bankrupt, that he had concealed property of considerable value, is bad because it does not describe the property as to kind or quantity, and does not state how the concealment was effected or when it occurred. (In re Rathbone, 1 N. B. R. 50; 2 Ben. 138; 15 Pittsb. Law J. 233; 25 Leg. Int. 60; Fed. Cas. 11580.)

An allegation in a specification filed in opposition to a discharge, that "said bankrupt has wilfully omitted" certain premises from the schedule attached to his petition, is entirely insufficient for the reason that it is not alleged that the bankrupt has wilfully sworn falsely in his affidavit annexed to his schedule. (In re Keefer, 4 N. B. R. 126; 3 Chi. Leg. News, 125; Fed. Cas. 7636; In re Hummitsh, 2 N. B. R. 8; 15 Pittsb. Leg. J. (O. S.) 494; Fed. Cas. 6866.) It must appear that the bankrupt knew the claim was false, in order to bar a discharge on the ground that he swore falsely in the affidavit accompanying his schedule that he was indebted to the creditor named therein, or that he did not disclose to the assignee that the claim was false and fictitious. (In re Blumenthal, 18 N. B. R. 555; Fed. Cas. 1576.) Charges in general terms of the destruction and removal of books and papers to defraud creditors and procurement of certain creditors' assent by pecuniary consideration are too vague to prevent a discharge. (In re Freeman, 4 N. B. R. 17; 4 Ben. 245; Fed. Cas. 5082.) Specifications charging the bankrupt with having concealed his estate and effects, and with having concealed, removed, altered and destroyed the books and writings relating thereto, are insufficient for want of averment of fraudulent intent. (In re Conduct, 19 N. B. R. 142; 2 N. J. Law J. 82; Fed. Cas. 3094.) Incomplete specifications in opposition to a discharge may be amended in due course. (In re McIntire, 1 N. B. R. 115; 1 Amer. Law T. Rep. Bankr. 120; Fed. Cas. 8623.)

**Grounds for refusing discharge.**—Under the act of 1867, a discharge was refused where the bankrupt had omitted from his schedule of assets

an estate in expectancy under a will (In re Connell, Jr., 3 N. B. R. 113; Fed. Cas. 3110); or if he put into his schedule, as due, a debt which was false or fictitious (In re Orcutt, 4 N. B. R. 176; Fed. Cas. 10550); or if he wilfully swore falsely in the affidavit annexed to his inventory in stating that he had no assets; or if he had concealed his property and had been guilty of fraud in not delivering such property to his assignee. (In re Rathbone, 1 N. B. R. 145; 1 Amer. Law T. Rep. Bankr. 70; Fed. Cas. 11583; In re Hussman, 2 N. B. R. 140; 2 Amer. Law T. Rep. Bankr. 53; 1 Chi. Leg. News, 177; Fed. Cas. 6951.) And it was refused where a member of a firm withdrew as his exemption a homestead in his wife's name, partly paid for by the wife and partly by money from the firm's earnings. (In re Croft Bros., 17 N. B. R. 324; 6 N. Y. Weekly Dig. 218; 8 Biss. 188; 10 Chi. Leg. News, 204; 6 Amer. Law Rep. 597; Fed. Cas. 3404.) It was also refused in case of a voluntary petition of partners, where the names of parties who should be joined as petitioners were not so joined. (Citizens' Nat. Bank v. Cass et al., 18 N. B. R. 279; 6 Weekly Notes Cas. 371; 6 Reporter, 579; 19 Alb. Law T. 119; 26 Pittsb. Leg. T. 25; Fed. Cas. 2732.)

Where, in opposition to a discharge, issues of fact are raised on the specifications, and a *prima facie* case of fraud is made out, the discharge will be withheld until such *prima facie* case is overthrown. (In re Doyle, 3 N. B. R. 190; Fed. Cas. 4052.)

If there be an omission to enter an order refusing a discharge, the bankrupt court may make it *nunc pro tunc*, if no rights of third persons have intervened which can be thereby prejudiced. (In re Drisco et al., 14 N. B. R. 551; Fed. Cas. 4086.)

That which would prevent a discharge will also invalidate one, if the appropriate remedy be sought. (In re Rainsford, 5 N. B. R. 381; Fed. Cas. 11537.)

The court will refuse a discharge where it appears, upon an inspection of the record, that the bankrupt is not entitled thereto, although there are not objections interposed by creditors. (In re Wilkinson, 3 N. B. R. 74; 2 West. Jur. 350; 16 Pittsb. Leg. J. 237; Fed. Cas. 17667; In re Sohoo, 3 N. B. R. 52; Fed. Cas. 13162.)

**Books of account.**—Under the corresponding section of the act of 1867 it was provided that a merchant or tradesman must keep books of account in order to be entitled to a discharge in bankruptcy (In re Bond, 4 N. B. R. 164; Fed. Cas. 1697; In re Odell et al., 17 N. B. R. 73; 9 Ben. 299; Fed. Cas. 10126; In re O'Dannon, 2 N. B. R. 6; Fed. Cas. 15644; In re Tyler, 4 N. B. R. 27; Fed. Cas. 13305); but the books must be such as will at all times exhibit to his creditors his position, so that when placed before them for investigation they may at once ascertain his standing and property and the result of his business, and whether everything has been fair and honest on his part. (In re Brockway, 7 N. B. R. 575; 6 Ben. 326; Fed. Cas. 1917; In re Garrison, 7 N. B. R. 287; 5

Ben. 430; Fed. Cas. 5354.) A failure of a bankrupt to surrender the books of account to the assignee in insolvency, make return of them in his schedules or otherwise account for them, creates the presumption that he has them, and he is held guilty of concealing them. (In re Beale, 2 N. B. R. 178; 1 Lowell, 823; 2 Amer. Law T. Rep. Bankr. 95; 1 Chi. Leg. News, 326; Fed. Cas. 1150.)

In the following cases it has been held unnecessary to keep books of account, and discharge has been granted: One who was a stock and gold broker, but was not a member of a stock exchange, and conducted his business through other brokers who were members (In re Moss, 19 N. B. R. 132; Fed. Cas. 9877); an illiterate farmer who also periodically purchased and sold horses, cattle, etc. (In re Cote, 14 N. B. R. 503; 2 Lowell, 374; Fed. Cas. 3267.)

**Failure to keep books not excused.**—Where a bankrupt has not kept proper books of account for several months before his bankruptcy, a discharge will be refused. (In re Archenbrow, 12 N. B. R. 17; 7 Chi. Leg. News, 231; Fed. Cas. 505.) It has also been held under the act of 1867 that a discharge will be refused where there is an omission to keep proper books of account, even without fraudulent intent (In re Solomon, 12 N. B. R. 94; 6 Phila. 481; 25 Leg. Int. 364; 1 Chi. Leg. News, 77, 107; Fed. Cas. 18167; In re Archenbrow, 12 N. B. R. 17; 7 Chi. Leg. News, 231; Fed. Cas. 505); or where the omission is not wilful. (In re Newman, 2 N. B. R. 99; 3 Ben. 20; 1 Chi. Leg. News, 123; Fed. Cas. 10175.)

The following have been held to constitute a proper keeping of books of account: The keeping of all invoice bills carefully together without an invoice book, the other customary books being kept (In re Reed, 13 N. B. R. 380; 1 N. Y. Wkly. Dig. 100; Fed. Cas. 11639); bank books showing amount received, and books showing amounts and to whom paid, but no cash book (In re Marsh et al., 19 N. B. R. 297; Fed. Cas. 9109); an entry of a chattel mortgage or a promissory note in a trader's blotter; a real-estate transaction entered in the blotter kept by the bankrupt as a trader, fully disclosing his indebtedness thereto. (In re Winsor, 16 N. B. R. 152; 9 Chi. Leg. News, 403; 2 Cin. Law Bul. 212; Fed. Cas. 17885.) A detached check is admissible in evidence, such check having once formed a part of the book, and together with the stub showed just how the book was kept. (In re Brookway, 7 N. B. R. 595; 6 Ben. 326; Fed. Cas. 1917.) A pass-book is a book of account and a necessary one. (In re Blumenthal, 18 N. B. R. 575; Fed. Cas. 1576.) Books of accounts in another business need not be kept. (In re Friedberg, 19 N. B. R. 302; Fed. Cas. 5116; In re Herdic, 19 N. B. R. 885; Fed. Cas. 6408.) The accidental omission of entries in a trader's books of account is no ground for withholding a discharge (In re Burgess, 3 N. B. R. 47; Fed. Cas. 2153); nor is the mutilation of books of account, if satisfactorily explained (In re Noonan et al., 3 N. B. R. 63; Fed. Cas. 10201); nor will a discharge be refused where material erasures and alterations appear on the books of a bankrupt, unless it is evi-

dent that they were made with fraudulent intent. (In re Antisdel, 18 N. B. R. 289; Fed. Cas. 490.) It is not necessary that the books of account contain entries of debts owed at the time the bankrupt went into trade, previously contracted, as well as those debts incurred in his business as a trader. (In re Winsor, 16 N. B. R. 153; 9 Chi. Leg. News, 402; 2 Cin. Law Bul. 212; Fed. Cas. 17885.) If creditors can gather from the books kept by a bankrupt a correct understanding of his financial condition, the requirement that proper books of account shall be kept is satisfied. (In re Antisdel, 18 N. B. R. 289; Fed. Cas. 490.)

The following have been held not to have kept proper books of account: Bankrupts whose entries of receipts and disbursements in cash books are unintelligible (In re John Murdock et al., In re Mackey, 4 N. B. R. 17; Fed. Cas. 8338); a merchant or tradesman who keeps neither invoice book, cash book, blotter, day book, journal or ledger, but only books containing memoranda of business transactions, from which no correct estimate of the condition can be made (In re Schumpert, 8 N. B. R. 415; Fed. Cas. 12491); one who makes entries of business transactions on slips of paper, each entry being on a separate slip (In re Hammond v. Coolidge, 3 N. B. R. 71; 1 Lowell, 381; Fed. Cas. 5999); one who fails to keep a cash book (In re Bellis et al., 3 N. B. R. 124; 4 Ben. 53; Fed. Cas. 1275; In re Littlefield, 3 N. B. R. 13; 1 Lowell, 331; 2 Amer. Law T. 122; 1 Amer. Law T. Rep. Bankr. 164; Fed. Cas. 8398); a bankrupt who kept no cash book, but had an account with "merchandise" in his ledger, showing in one column aggregate monthly payments for grain, and in another aggregate monthly amount of sales, the books not showing what moneys were expended in carrying on business nor what sums were taken out for family expenses (In re Anketell, 19 N. B. R. 268; Fed. Cas. 394); a bankrupt who preserved the invoices of his purchases, receipts of his payments, a bank book and canceled checks, and a daily memorandum of cash receipts on a slate which were erased each succeeding day (In re Solomon, 2 N. B. R. 94; 6 Phila. 481; 25 Leg. Int. 364; 1 Chi. Leg. News, 77, 107; Fed. Cas. 13167); one who did not keep a book of cash receipts and expenditures (In re Gay, 2 N. B. R. 114; 1 Hask. 108; 1 Amer. Law T. Rep. Bankr. 72; 2 Amer. Law T. Rep. Bankr. 52; Fed. Cas. 5279); one who did not keep invoice or stock books from which to determine what property he was possessed of in his trade (In re White, 2 N. B. R. 179; 16 Pittsb. Leg. J. 110; 2 Amer. Law T. 105; 1 Amer. Law T. Rep. Bankr. 136; 1 Chi. Leg. News, 326; Fed. Cas. 17532); a bankrupt who was a merchant, and illiterate, and kept no books of account except a small memorandum book of sales in which the entries were made by his son, daughter, and even strangers purchasing goods of him, but who relied chiefly upon his memory as to his business transactions (In re Newman, 2 N. B. R. 99; 3 Ben. 20; 1 Chi. Leg. News, 123; Fed. Cas. 10175); a debtor who kept no books showing transactions between him and a person whom creditors alleged to be his partner, but who kept



proper books of account with customers. (In re Blumenthal, 18 N. B. R. 555; Fed. Cas. 1576.)

**Impeachment of a discharge.**—A bankrupt's discharge cannot be impeached in a state court for any of the reasons which would prevent the United States court from granting it. (Alston v. Robinett, 9 N. B. R. 74.) A discharge granted by a court of competent jurisdiction is conclusive as a bar to all suits commenced in state courts, when properly pleaded, and cannot be impeached on the ground that it was obtained by fraud: (Hudson v. Bingham, 8 N. B. R. 494; Smith v. Ramsey, 15 N. B. R. 447.) A discharge is conclusive in the absence of fraud, and cannot be impeached collaterally by a creditor to whom no notice of the proceedings had been given (Williams v. Butcher, 12 N. B. R. 148; Black v. Blazo, 13 N. B. R. 195); nor on the ground that such notice was not given because of the fraud of the bankrupt in representing in his schedule that the creditor's residence was unknown to him when he actually knew such residence. (Rayl, Adm'r, etc. v. Lapham, 15 N. B. R. 508.)

**Replication to plea of discharge.**—Under the act of 1867 it was held that where a defendant to a suit on a note pleads his discharge in bankruptcy, a replication that the plaintiff ought not to be barred because his claim was not included in the schedule and he had no notice will be held bad on demurrer. (Symonds v. Barnes, 6 N. B. R. 377.) Replications filed in an action in a state court, setting up fraudulent acts of a bankrupt in avoidance of the discharge, will also be held bad. (Reed v. Bullington, 11 N. B. R. 408; Stokes et al. v. Mason, 12 N. B. R. 498.) Matter intended to avoid a discharge should be replied in response to the plea, and should not be set forth in the declaration. (Brown et al. v. Broach et al., 16 N. B. R. 296.) In an action on a judgment recovered prior to an adjudication of bankruptcy, the plaintiff is entitled to set up a fraudulent concealment by the bankrupt of his property, against his plea of discharge. (In re Perkins et al., 8 N. B. R. 189.)

**Proceedings suspended to await a discharge.**—A bankrupt defendant may file a bond to dissolve an attachment, although it was issued more than four months before the commencement of the proceedings in bankruptcy, and have the case continued to await his discharge. (Braley v. Boomer et al., 12 N. B. R. 308.) Proceedings to collect a provable debt shall, on application of the bankrupt, be stayed, to await the determination of the court in bankruptcy on the question of the discharge, provided there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge. (In re Belden, 6 N. B. R. 443; Fed. Cas. 1239.) Where a creditor having proved his debt in bankruptcy, and there having been unreasonable delay by a debtor in obtaining his discharge, the former attempts to execute a judgment obtained against the latter prior to bankruptcy, such proof is not a satisfaction of the debt, but a discharge by the bankrupt court must first be obtained, and,

if refused, the creditor can proceed at law. (*Dingee v. Becker*, 9 N. B. R. 508; Fed. Cas. 3919.)

An action was brought by a creditor, who had proved his claim in bankruptcy, three years after adjudication. No dividend had been paid, no final account rendered, and no discharge granted or refused. The defendant set up the pendency of bankruptcy proceedings. The plaintiff urged that, the time having elapsed within which a discharge could be granted, the proceedings were terminated and his right of action revived. It was held that the proceedings were not terminated without a discharge, and that the right of action was not revived. (*Wood v. Hazen*, 15 N. B. R. 491.)

**Discharge releases debtor from liability as surety.**—A bankrupt is released from liability as surety on a guardian's bond by a discharge in bankruptcy. (*Reitz v. People*, 16 N. B. R. 96.) A discharge releases a surety on a guardian's bond from liability for defaults of the guardian which occurred prior to commencement of proceedings against the surety. (*Jones et al. v. Knox*, 3 N. B. R. 559.) Where a principal is released from a debt by his discharge, he will also be released from his contingent liability to his surety for the same debt. (*Halliburton v. Carter*, 10 N. B. R. 359.) A surety on the bond of a United States officer is released from his liability thereon by a discharge. (*United States v. Throckmorton*, 8 N. B. R. 309; 18 Int. Rev. Rec. 54; Fed. Cas. 16516.) Where a judgment against the sureties on an appeal bond follows the rendition of a judgment against the principal, sureties discharged in bankruptcy pending such appeal must plead such discharge before judgment on the appeal is rendered or it will not avail as a defense. (*Jones et al. v. Coker et al.*, 16 N. B. R. 343.)

**Failure to plead a discharge.**—A delay of over a year in asking for leave to plead a discharge in bar of an action commenced prior to the adjudication is sufficient cause for refusing such request, the plea of a discharge being a purely legal and not an equitable defense. (*Medburg v. Swan*, 8 N. B. R. 537.) A discharge is no defense where a bankrupt fails to plead the same in bar to an action and allows judgment to be recovered against him (*Revere Copper Co. v. Dimock*, 19 N. B. R. 372), and by neglecting to insist upon his discharge he waives its benefits and renders any property he may have liable for the judgment. (*Dewey et al. v. Moyer et al.*, 16 N. B. R. 1.) A discharge in bankruptcy does not *per se* operate as a discharge of all a bankrupt's debts. A court will not take judicial knowledge of a discharge, and, if not pleaded, a valid judgment may be rendered against a bankrupt. (*Jenks v. Opp*, 12 N. B. R. 19.)

**When a discharge may not be pleaded.**—A bankrupt will not be allowed to file a supplemental answer setting up his discharge, where an attachment issued more than four months prior to the institution of bankruptcy proceedings was dissolved by filing a bond. (*Holyoke et al. v. Adams et al.*, 13 N. B. R. 413.) A discharge obtained pending an ap-

peal cannot be pleaded in an appellate court. Such court takes cognizance only of the matters appearing on the record of the court below. (*Serra & Hijo v. Hoffman & Co.*, 17 N. B. R. 124; *Knapp et al. v. Anderson et al.*, 15 N. B. R. 316.) Where, upon suit against a commission merchant for the proceeds of the sale of goods consigned to him, it appears that prior to the commencement of the action the defendant was adjudged a bankrupt, and had received no discharge, a discharge obtained afterward does not release the debt. (*Treadwell et al. v. Holloway et al.*, 13 N. B. R. 61.)

**Effect of the discharge on partnership debts.**—A man cannot be discharged from his liabilities as a member of a firm unless the debts and assets of the firm are considered and adjudicated upon by the court. (*Hudgins v. Lane et al.*, 11 N. B. R. 462; 2 *Hughes*, 361; *Fed. Cas.* 6827.) Where a discharge in bankruptcy is granted to a member of a firm, it is a release of joint debts as well as of separate debts. A discharge binds copartners as well as joint creditors, where granted to a copartner. (*Wilkins v. Davis*, 15 N. B. R. 60; 2 *Lowell*, 511; *Fed. Cas.* 17664.) A discharge properly granted to the individual members of a firm will be available in respect to any indebtedness of any other partnership in which they are interested and for whose debts they might be liable. (*In re Warren and Charles Leland*, 5 N. B. R. 222; 5 *Ben.* 168; *Fed. Cas.* 8228.) A discharge founded upon the individual petition of a firm, the other members of which had died insolvent, would probably operate as a discharge of the petitioner from his debts as a member of said firm as well as individually, but it would be safer to amend the petition. (*In re Bidwell*, 2 N. B. R. 78; *Fed. Cas.* 1892.)

**Effect, generally, on the discharge, of collateral proceedings.**—A discharge may be pleaded by simple averment of the facts in an action to enjoin collection of a judgment on the ground of discharge, and a copy of the discharge need not be set out. (*Hayes v. Ford*, 15 N. B. R. 569.) If a discharge be pleaded, the court cannot dismiss the cause on that ground, but must submit the issue to a jury. (*Austin v. Markham*, 10 N. B. R. 548.) A plea setting up a discharge, if a plea in abatement, is bad if not sworn to. If such plea is in bar, when the notes and bond sued upon were given after bankruptcy, it is insufficient. (*Beeson et al. v. Howard*, 11 N. B. R. 486.) A plea of a discharge which does not set forth a copy of the discharge is bad. A plea is bad at common law unless it aver what court adjudged the defendant to be a bankrupt or granted him his discharge as such, or set out the facts upon which any court would acquire jurisdiction so to do. Such plea should conclude with a verification. If defective, it may be amended. (*Stoll v. Wilson*, 14 N. B. R. 571.)

No satisfaction of a judgment will be entered on the record upon the production of a discharge unless the judgment is one from which the discharge will release the debtor. An attachment upon exempt prop-

erty is not dissolved, but may be enforced after the commencement of proceedings in bankruptcy. (Robinson et al. v. Wilson, 14 N. B. R. 565.) A refusal to set aside an execution on account of defendant's discharge is not subject to a writ of error. The remedy in case of such refusal is by writ of *audita querela*, upon which the judgment of the court below is examinable. (Williams v. Butcher, 12 N. B. R. 143.)

Where, in an attachment suit on a promissory note, the defendant after answering files a petition in bankruptcy and suggests the bankruptcy on the records of the state court, and is denied a continuance pending the proceedings in bankruptcy, and he is afterwards discharged, he may bring a suit of review to reverse the judgment, having obtained leave of court. (Todd et al. v. Barton et al., 13 N. B. R. 197.)

Where, in an action of *assumpsit* upon promissory notes, the defendant files an affidavit of defense setting up his adjudication in bankruptcy, and that the time had not arrived for an application for discharge, although such matter does not constitute a defense, it is sufficient to stay the action and prevent judgment. (Frostman et al. v. Hicks et al., 15 N. B. R. 41; sec. 5106.)

The state court has jurisdiction over all subjects arising out of the question whether the debt in litigation is, or not, embraced in the class or classes of liabilities from which the debtor is absolved, and upon which his discharge has no effect. (Stevens v. Brown, 11 N. B. R. 568.)

A debtor arrested in a civil action prior to commencement of proceedings in bankruptcy is not entitled to be released from such arrest upon being adjudged a bankrupt. But if the debt or claim on which the action under which he is arrested is one of which a discharge in bankruptcy will act as a release, he will be entitled to release from arrest. (Brandon National Bank v. Hatch, 16 N. B. R. 468.)

Where a bankrupt applies for an adjudication to restrain the collection of a judgment on the ground that he has been discharged, and the record shows nothing giving the bankrupt court jurisdiction, such jurisdiction will be presumed. (Hayes v. Ford, 15 N. B. R. 569.)

**The effect, in general, of a discharge.**—Bankrupt laws discharge the contract, as contradistinguished from insolvent laws, which only liberate the person. (Deford et al. v. Hewlet, 18 N. B. R. 518.) The summary jurisdiction of the bankrupt court over the bankrupt ceases with the granting of his discharge. (In re Dole, 9 N. B. R. 193; 11 Blatchf. 499; Fed. Cas. 3964.)

Where a bankrupt is required to show cause why he should not be in contempt for not appearing to be examined, and he replies that before the order was issued he had been discharged, the proceedings for contempt will be dismissed. (In re Jones, 6 N. B. R. 336; Fed. Cas. 7449.) The discharge of the bankrupt is conclusive of the regularity of the proceedings, and can only be attacked in the court granting it upon proceedings for that purpose. (In re Witkowski, 10 N. B. R. 209; Fed. Cas.

17920.) The discharge is the judgment of the court and stands upon the footing of other judgments. Opportunity is offered to contest it, and if not availed of in the mode and within the time allowed, all remedy to annul it is cut off. (*Stevens v. Brown*, 11 N. B. R. 568.) A certificate of discharge in bankruptcy, signed by the judge and attested by the clerk under the seal of the court, is not only sufficiently authenticated, but it is precisely the means by which the bankrupt is to prove and have the benefit of his discharge (*Miller v. Chandler*, 17 N. B. R. 251); it is conclusive evidence in favor of the bankrupt of the fact and regularity thereof, but it is not conclusive evidence in favor of other parties seeking to use it. (*Dewey v. Moyer*, 18 N. B. R. 114.)

The granting of the discharge does not oust the register of his jurisdiction of the cause, as it is a mere incident in the proceedings. The cause proceeds before the register until the final discharge, by the court, of the assignee from the trust. (*In re Dole*, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 8965.)

After a bankrupt's discharge, he cannot be required to appear and submit to an examination touching his acts and business and to give complete statements about his lands, etc., prior to adjudication. (*In re Dean*, 8 N. B. R. 188; Fed. Cas. 8701. For *contra*, see *In re Heath et al.*, 7 N. B. R. 448; Fed. Cas. 6804.)

Where a debtor has obtained a discharge under a state insolvent law, and subsequently obtains a discharge under the Bankrupt Act, the discharge in bankruptcy will not affect the right of the insolvent trustee to property acquired by inheritance after the granting thereof. (*Lavender v. Gosnell et al.*, 12 N. B. R. 282.)

Amounts remaining in the hands of the assignee, after discharge of a bankrupt against whose estate no debts were proved, and there is reasonable cause to believe none will be proved, will, upon proper petition, be paid to the bankrupt. (*In re Hoyt*, 8 N. B. R. 13; Fed. Cas. 6806.) He is entitled to the funds acquired subsequent to his final discharge, and may use them to purchase his former assets at his assignee's sale. (*Phelps, Ass. v. McDonald et al.*, 16 N. B. R. 217.) An application for exemption can only be made before his discharge; afterward he cannot be re-admitted to petition for and to be allowed an additional exemption granted after his discharge. (*In re Kean et al.*, 8 N. B. R. 367; 2 Amer. Law Rec. 230; Fed. Cas. 7630.)

Where a bankrupt agrees with a creditor to pay his claim in full on condition that the creditor will agree to a discharge, and after the discharge a note is made for the difference between the claim and the dividend, which the wife of the bankrupt signs and secures by a mortgage on her separate property without knowledge of the agreement, such mortgage and note are void. (*Blasdel v. Fowle et al.*, 17 N. B. R. 412.)

A bankrupt's discharge in a foreign country does not discharge a debt made in and with reference to the laws of this country. (*In re Shep-*

pard, 1 N. B. R. 116; 7 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; Fed. Cas. 12753.)

For stay of proceedings pending application for a discharge, see sec. 11.

c. The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

After a bankrupt has been examined in open court or at a meeting of his creditors, and filed the schedule of his property and list of his creditors, he may offer terms of composition (sec. 12a), which the judge may confirm if satisfied that it is for the best interests of his creditors, that it is made in good faith, and that the bankrupt has not been guilty of any act which would bar a discharge (sec. 12d), when the consideration must be distributed as the judge directs and the case dismissed (sec. 12e), the title to his property thereupon revesting in the bankrupt. (Sec. 70f.)

Effect of composition.—A discharge by virtue of compliance with the terms of composition is a discharge by operation of law. (In re Merri-man, 18 N. B. R. 411; 44 Conn. 587; 26 Pittsb. Leg. T. 120; Fed. Cas. 9479.) The inability of a debtor to obtain a discharge by order of the court does not preclude his obtaining satisfaction of his debts by way of composition (In re Weber Furniture Co., 13 N. B. R. 529; Fed. Cas. 17330), the effect of which is to absolutely discharge the debts of those creditors whose names, addresses and debts are placed in the statement produced at the meeting of creditors, and no other discharge is needed. Other debts are not discharged. (In re Becket, 12 N. B. R. 201; 2 Woods, 173; 7 Chi. Leg. News, 243; Fed. Cas. 1210.) But, unless the amount agreed upon is actually paid, the composition will not discharge the debtor. (In re Hurst, 13 N. B. R. 455; 1 Flip. 462; 8 Chi. Leg. News, 147; 3 Cent. Law J. 78; Fed. Cas. 6925.) If a composition has been duly ratified it confines the secured creditor to his security, and discharges the debtor from personal liability for the secured debt. (In re Lytle & Co., 14 N. B. R. 457; 11 Phila. 522; 3 N. Y. Wkly. Dig. 303; 5 Amer. Law Rec. 306; 9 Chi. Leg. News, 18; 33 Leg. Int. 349; 1 Cin. Law Bul. 246; 24 Pittsb. Leg. J. 14; Fed. Cas. 8650.) Where the holder of an accommodation note, knowing it to be such, signs a resolution in favor of composition with the indorser, the maker of the note is not released from liability. (Guild v. Butler, 16 N. B. R. 347.) A resolution of composition will dissolve an attachment made within four months before the commencement of the proceedings in bankruptcy. (Smith, Stebbins & Co. v. Engle et al., 14 N. B. R. 481.) A discharge by composition will effect the dismissal of an attachment suit instituted two weeks before a petition in bankruptcy is filed. (Smith, Stebbins & Co. v. Engle et al., 14 N. B. R. 489.)

See also COMPOSITIONS, sec. 12.

**Sec. 15. Discharges, when revoked.**—*a.* The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

[Act of 1867. SEC. 34. . . . That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, setting forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt, are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if the court shall find that said fraudulent acts and all of them, set forth as aforesaid, are not proved, or that they were known to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt and the validity of his discharge shall not be affected by said proceedings.]

The object of this section is to maintain good faith in the securing of a discharge. In order to protect persons acting upon the strength of a discharge, it is provided that on its revocation the property acquired by the bankrupt, in addition to his estate at the time the adjudication was

made, is to be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such discharge was in force, and the residue, if any, shall be applied to the payment of debts which were owing at the time of the adjudication. (Sec. 64c.) Whenever a discharge is revoked upon the appointment and qualification of a trustee, he is vested with the title to all of the bankrupt's property as of the date of the final decree revoking the discharge. (Sec. 70d.)

**When a discharge will be revoked.**—A discharge obtained by fraud will be revoked. (In re Augenstein, 16 N. B. R. 252.) A discharge will also be revoked if it appear that the bankrupt swore falsely in scheduling his creditors and liabilities, and that the creditor thus omitted from the schedule did not know of the act until after the discharge was granted. (In re Herrick, 7 N. B. R. 341; Fed. Cas. 6419.) Therefore if, by wilfully making a false schedule or affidavits, the bankrupt prevents notice to a creditor, his discharge may be revoked. (Rayl, Adm'r, v. Lapham, 15 N. B. R. 508.) A discharge will also be revoked if the requirements of the act in force at the time have not been complied with. (In re Carrier & Baum, 13 N. B. R. 208; 23 Pittsb. Leg. J. 57; Fed. Cas. 2413.)

Where a creditor of a bankrupt who has filed objections to his discharge is prevented by accident from attending at the hearing, and the order of discharge is issued, and in the same term files a petition to revoke the discharge, the court has the power to do so; and the court has a right to recall a final decree granting a discharge to a bankrupt upon application in the term at which the decree was passed, and it seems that the court also has the power after the term has ended. (In re Dupee, 6 N. B. R. 89; 2 Lowell, 18; Fed. Cas. 4183.)

Where, after the bankrupt has been discharged, creditors bring an action to have the discharge revoked on the ground that the debtor concealed certain property, setting out the manner in which it had been concealed, and asking that certain conveyances be set aside as fraudulent, a demurrer will not be sustained. (Nicholas, Ass., v. Murray et al., 18 N. B. R. 469; 5 Sawy. 320; Fed. Cas. 10223.)

**Waiver of discharge.**—In an action to set aside a transfer of property made to defraud creditors, the fraudulent holder of the property cannot set up as a defense the debtor's discharge in bankruptcy, where the debtor has waived such discharge. (Dewey et al. v. Moyer et al., 16 N. B. R. 1.)

**When a discharge will not be revoked.**—Where the creditor has been guilty of laches in filing a motion to revoke the discharge, the motion will be denied (In re Buchstein, 17 N. B. R. 1; 9 Ben. 215; Fed. Cas. 2076), since the limitation in relation to proceedings to amend a discharge is absolute, and the time begins to run from the date of the discharge and not from the discovery of fraud (In re Brown, 19 N. B. R. 312; Fed. Cas. 1983); and therefore, two years after receiving his dis-



charge, a bankrupt cannot be compelled to submit to an examination for the purpose of instituting or aiding a proceeding to vacate his discharge. (In re Dole, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 3965.) Creditors who have proved their debts in bankruptcy cannot have the bankrupt's discharge set aside after his death in order that they may prove their demands against the estate of the debtor in the hands of his administrator. (Young et al. v. Ridenbaugh's Adm'r, 11 N. B. R. 563; 3 Dill. 349; 7 Chi. Leg. News, 242; Fed. Cas. 18173.) A discharge in bankruptcy will not be vacated on general averments (In re McIntire, 1 N. B. R. 115; 1 Amer. Law T. Rep. Bankr. 120; Fed. Cas. 8823); nor where the testimony relied on was known to the creditor seeking the revocation before the discharge was granted. (In re Marionneaux, 13 N. B. R. 222; 1 Woods, 37; Fed. Cas. 9088.) Ignorance of the fact that a discharge had been granted will not support a motion to revoke it after the time fixed by rule of court (In re Buchstein, 17 N. B. R. 1; 9 Ben. 315; Fed. Cas. 2076); nor will a petition to set aside a discharge be entertained in regard to a matter which is not barred by the discharge. (In re Mansfield, 6 N. B. R. 388; Fed. Cas. 9049.) A new trial of specifications against a discharge is not authorized after the discharge has been granted, even if the opposing creditor can adduce new facts. (In re Corwin, 19 N. B. R. 422; Fed. Cas. 8259.)

Where a party is surety on a bond given to the United States in a suit to forfeit a steamer and cargo, and before the termination of the suit in favor of the United States he becomes bankrupt and is discharged, and the United States sues him and obtains judgment on the bond, which judgment is transferred to a third party for consideration, who then files a petition to set aside the discharge, the petition will be dismissed. (In re Mansfield, 6 N. B. R. 388; Fed. Cas. 9049.)

**Jurisdiction of federal courts.**—The authority to revoke a discharge in bankruptcy, conferred upon the federal courts, is incompatible with the exercise of the same by the state court, and the former is paramount. (Corey v. Ripley, 4 N. B. R. 163; Alston v. Robinett, 9 N. B. R. 74.) Where a district court has granted a discharge it has sole jurisdiction of a proceeding to annul it. (Nicholas, Ass. v. Murray et al., 18 N. B. R. 469; Fed. Cas. 10223.)

**A discharge cannot be impeached in a collateral action.**—A discharge duly granted, when pleaded in bar to the further maintenance of an action for prior indebtedness, cannot be impeached in a state court for any cause which would have prevented the granting of it (Corey v. Ripley, 4 N. B. R. 163); nor can it be impeached in a collateral action on the ground that a creditor had no notice of bankruptcy proceedings, and that the bankrupt fraudulently procured notice to be withheld, nor because the bankrupt removed his property from the jurisdiction of the court in which plaintiff's action was pending, with intent to defraud creditors. (Howland v. Carson, 16 N. B. R. 372.)

**Sec. 16. Co-debtors of bankrupts.**—*a*. The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

[Act of 1867. **Sec. 33.** . . . and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety or otherwise.]

Provisions affecting discharges are found under section 14.

**Co-debtors of bankrupts.**—If a principal debtor become insolvent or procures a discharge in bankruptcy, a surety is not released, and if the principal be discharged by his creditors the effect is the same. (The "Home," 18 N. B. R. 557; Fed. Cas. 6657.) No discharge releases, discharges or affects any person liable for the same debt, or with the bankrupt, either as partner, joint contractor, indorser, surety or otherwise. (In re Stevens, 5 N. B. R. 112; 1 Sawy. 397; 1 Pac. Law Rep. 45; Fed. Cas. 13393; In re Levy, 1 N. B. R. 66; 2 Ben. 169; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 8297.) Where there are joint debtors, and one is beyond the reach of the process of the court, and equity has jurisdiction, a decree may be taken against the other for the whole amount due. (Lewis, Trustee, v. United States, 14 N. B. R. 64; 92 U. S. 618.) If one of two persons jointly and severally liable for a debt, who are not partners, does an act which would subject him to a decree of bankruptcy, such act does not affect his associate. (James, Adm'r, v. Atlantic Delaine Co. et al., 11 N. B. R. 390; Fed. Cas. 7179.)

An indorser is not released from his liability even if the holder of the note has proved his debt in bankruptcy against the maker for the full amount as an unsecured claim, but the holder, by so proving his debt, releases all his right to a mortgage given for the purpose of indemnifying the indorser. (Merchants' National Bank of Syracuse v. Comstock, 11 N. B. R. 235.) But the indorser is released by the holder of a note giving an extension of time to the principal for valuable consideration without the assent of the indorser. (Valley National Bank v. Meyers, Ass., 17 N. B. R. 257; Fed. Cas. 16821.) The holder of an accommodation note, knowing it to be such, who signs a resolution for composition in bankruptcy proceedings against an indorser, does not thereby release the maker from liability. (Guild v. Butler, 16 N. B. R. 347.) If the holder of a note assents to the discharge of the maker without the consent of the indorser, this releases the indorser. (In re McDonald, 14 N. B. R. 477; 14 Pittsb. Leg. J. 42; Fed. Cas. 8753.)

The discharge of a bankrupt does not affect the creditor's remedy against the sureties upon a bond given to dissolve a writ of garnishment issued more than four months before commencement of proceedings in

bankruptcy (In re Albrecht, 17 N. B. R. 287; Fed. Cas. 145); and since a claim for the proceeds arising from the sale of goods by a city auctioneer, not accounted for by him, is a debt not barred by a discharge, the sureties on the auctioneer's bond are not released by his discharge in bankruptcy. (Mayor et al. v. Walker et al., 11 N. B. R. 478.)

A joint judgment against a bankrupt and a third party does not in any way affect the right of the plaintiff to proceed against the third party, even though enjoined from enforcing execution against the bankrupt. (Penny v. Taylor, 10 N. B. R. 200; Fed. Cas. 10957.) And where a defendant, to dissolve an attachment, gives an undertaking with two sureties, and, more than four months after the issue of the attachment, bankruptcy proceedings are had, the discharge in bankruptcy will not prevent the judgment being recovered and the sureties bound therefor. (Holyoke v. Adams, 10 N. B. R. 270.)

The wife of a bankrupt cannot plead his discharge in bankruptcy in bar of an action against her for her half of community debts, where she has accepted the community (Ludeling v. Felton et al., 17 N. B. R. 310); and a discharge in bankruptcy releases a surety on a guardian's bond from liability for defaults of the guardian which occurred prior to commencement of proceedings against the surety. (Jones et al. v. Knox, 8 N. B. R. 559; Ex parte Taylor, 16 N. B. R. 40; 24 Pittsb. Leg. J. 205; 1 Hughes, 617; Fed. Cas. 18778.)

Where a decree has been rendered against a firm for a debt which is paid out of the firm assets, the solvent partner cannot be subrogated to the rights of the creditor of the firm who obtained the decree, for his share of the amount paid, against the separate estate of a bankrupt partner, as against that partner's other creditors. (In re Smith, 16 N. B. R. 118; Fed. Cas. 12991.)

**Sec. 17. Debts not affected by a discharge.—a.** A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

[Act of 1867. SEC. 33. That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; . . .

SEC. 34. That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth in *hæc verba*, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and [the] regularity of such discharge.]

Taxes due the United States, state, county, district or municipality must be paid in advance of dividends to creditors. (Sec. 64*a*.) The good of the community and public policy forbid the discharge of the bankrupt from a debt incurred through fraud while acting as an officer or in a fiduciary capacity.

**Judgment in action for fraud not barred.**—A judgment rendered solely on the ground of fraud does not merge the fraud, and is not released by a discharge in bankruptcy. (Warner v. Cronkite, 13 N. B. R. 52; 6 Biss. 453; 1 N. Y. Wkly. Dig. 291; 8 Chi. Leg. News, 17; Fed. Cas. 17180.) Where the ground of complaint is fraud in creating a debt, the rendition, with judgment thereon, does not merge in the original indebtedness so as to free it from taint of fraud, or to permit it to be discharged in bankruptcy; but where the original debt arises in contract, and the fraud is but an incident of the debt and not its creative power, the debt will be merged in the judgment and the bankrupt discharged therefrom, where such judgment was obtained prior to the filing of the petition in bankruptcy. (Shuman v. Struss, 10 N. B. R. 300.)

**When debts unproved or unscheduled are not barred.**—A discharge in bankruptcy will not release the lien of a judgment that was not proved (Darsey v. Mumpford, 17 N. B. R. 181), nor will it release the lien of a mortgage that is not proved. (Assignee of Wicks & Co. v. Perkins, 13 N. B. R. 280; 1 Woods, 383; Fed. Cas. 17615.) It is not a sufficient defense in an action to set aside a fraudulent conveyance pending at the time of filing the petition, the assignee not having interfered in the cause and the claim of the creditor not having been proved in the proceedings in bankruptcy. (Phelps et al. v. Curts et al., 16 N. B. R. 85.) It will not release a claim not included in the debtor's schedule, if the

creditor had no notice (*Symonds v. Barnes*, 6 N. B. R. 377; *Barnes v. Moore*, 2 N. B. R. 174; *Batchelder v. Low*, 8 N. B. R. 571; but for *contra*, see *In re Archenbrow*, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 504); or if the omission be fraudulent. (*Platt v. Parker*, 13 N. B. R. 14; *Thurmond v. Andrews and Wife*, 13 N. B. R. 157; *Heard v. Arnold et al.*, 15 N. B. R. 543.) But a discharge cannot be impeached in a collateral action on such grounds. (*Howland v. Carson*, 16 N. B. R. 872.)

**Debt not barred if discharge is not obtained.**—Where a defendant pleads his bankruptcy and that the debt sued on is provable and would be barred by a discharge and the proceedings are pending, but does not ask continuance to obtain a discharge, the claim may be prosecuted to final judgment. (*Holland v. Martin*, 18 N. B. R. 359.)

**Debts contracted in a fiduciary capacity.**—The finding of a state court that a debt was one created by the defalcation of the bankrupt while acting in a fiduciary capacity is conclusive on the bankrupt court. (*In re Whitney*, 18 N. B. R. 563; Fed. Cas. 17581.) A debt created by fraud or embezzlement of the bankrupt, or by his defalcation while acting in a fiduciary capacity, is provable. (*In re Rundle et al.*, 2 N. B. R. 49; 1 Chi. Leg. News, 30; Fed. Cas. 12133.) A commission merchant acts in a fiduciary character, and therefore a debt comprising the proceeds of sale of commission goods will not be released (*Lenke v. Booth*, 5 N. B. R. 351; *Meador et al. v. Sharpe*, 4 N. B. R. 492; *Treadwell et al. v. Holloway et al.*, 12 N. B. R. 61); a city auctioneer also acts in this capacity (*Mayor et al. v. Walker et al.*, 11 N. B. R. 478), as does also an attorney (*Flanagan v. Pearson*, 14 N. B. R. 87), or a guardian. (*Halliburton v. Carter*, 10 N. B. R. 359; *In re Maybin*, 15 N. B. R. 468; Fed. Cas. 9337.) An agent may also act in this capacity. (*Treadwell et al. v. Holloway et al.*, 12 N. B. R. 61. For *contra*, see *Woolsey v. Cade*, 15 N. B. R. 238; *Keime v. Graff et al.*, 17 N. B. R. 319; 5 Reporter, 439; 25 Pittsb. Leg. J. 118; Fed. Cas. 7650.) The certificate of discharge given to a bankrupt does not include liability as a surety for the faithful performance of duty by a public officer. (*United States v. Herron*, 9 N. B. R. 535; 20 Wall. 251.)

**Fraudulent debts.**—A judgment recovered on a debt contracted by fraud is not discharged. (*In re Patterson*, 1 N. B. R. 58; 2 Ben. 155; 15 Pittsb. Leg. J. 241; Fed. Cas. 10817.)

**Debts not fiduciary.**—The fiduciary relation does not exist where the agent is to share in the profits, acting with the knowledge of the principal, and more as a partner than as an agent (*Barber v. Sterling*, 17 N. B. R. 218); nor where a limited partnership is formed, and one member becomes indebted to another (*Pierce v. Shippee*, 19 N. B. R. 221); nor where an agent sells goods for his principal on commission, accounting and paying over the balance of sales monthly (*Grover et al. v. Clinton*, 8 N. B. R. 319; 6 Chi. Leg. News, 33; 21 Pittsb. Leg. J. 34; Fed. Cas. 5845); nor where goods are sold by a factor for parties who afterwards became

bankrupt and are discharged. (Owsley et al. v. Cowbin et al., 15 N. B. R. 489; 2 Hughes, 433; 4 N. Y. Weekly Dig. 431; 9 Chi. Leg. News, 323; 4 Law & Eq. Rep. 49; 23 Int. Rev. Rec. 210; Fed. Cas. 10636.) A judgment on a promissory note is not, *prima facie*, a fiduciary debt (Hayes v. Ford, 15 N. B. R. 569); and a surety on a guardian's bond is released by a discharge in bankruptcy. (Ex parte Taylor, 16 N. B. R. 40; 24 Pittsb. Leg. J. 205; 1 Hughes, 617; Fed. Cas. 13773; Reitz v. People, 16 N. B. R. 96.) Where a bankrupt factor is arrested under an order of a state court on a cause of action based on a debt owing by him for the proceeds of goods consigned to and sold by him, he will be discharged from such arrest, as the debt is released by a discharge in bankruptcy. (In re Smith et al., 18 N. B. R. 24; Fed. Cas. 12976.)

**Fiduciary or fraudulent debts barred by composition.**—Fiduciary debts are discharged by a composition (In re Rodger et al., 18 N. B. R. 252; Fed. Cas. 1199), and a debt created by fraud is discharged by a composition in which the creditor participates. (Wells v. Lamprey, 16 N. B. R. 205.)

**The revival of a debt.**—If there be no express promise, but a promise is to be raised by implication of law from the acknowledgment of the party, such acknowledgment ought to contain an unqualified and direct admission of a previous subsisting debt which the party is liable and willing to pay. (In re Harden, 1 N. B. R. 97; 1 Hask. 163; 1 Amer. Law T. Rep. Bankr. 49, 119; 15 Pittsb. Leg. J. 343; Fed. Cas. 6048.) The promise must be clear, distinct and unequivocal. (Allen & Co. v. Ferguson, 9 N. B. R. 481; 18 Wall. 1.) A new promise to pay a debt, after a discharge in bankruptcy, revives the debt (Classin v. Schoeneman, 16 N. B. R. 98; Dusenbury v. Hoyet, 10 N. B. R. 313); or is a sufficient consideration to create a new one. (Dewey v. Moyer, 18 N. B. R. 114.) A new promise to pay a debt in consideration that the payee will withdraw objections to the discharge is illegal and void, and no action can be sustained thereon. (Austin v. Markham, 10 N. B. R. 548.) A promise of a bankrupt after bankruptcy, but before his discharge, to pay a note made before bankruptcy, cannot be enforced in a suit upon the note. (Ogden et al. v. Redd, 18 N. B. R. 317.)

**Debts, in general, not barred by discharge.**—Where a bankrupt is surety on a bond, on which no cause of action arose until after he was discharged in bankruptcy, the discharge does not release him from liability. (Eastman v. Hibbard, 13 N. B. R. 360.) Where, after parties have warehoused their property, they file their petition and are adjudicated bankrupts and duly discharged, it has been held that their liability for storage is a continuing one, and their discharge does not release them from liability incurred after the filing of the petition. (Robinson v. Pesant, 8 N. B. R. 426.)

Where a suit is brought to recover for a month's rent, part of which accrued before bankruptcy and part afterwards, for the part accruing

before bankruptcy the plaintiff may prove against the estate and the discharge will release it, but for that part accruing afterward he may recover, as the discharge did not release it. (*Treadwell et al. v. Marden*, 18 N. B. R. 353.)

The discharge of one member of a firm is no bar in a suit against the firm, if the creditor can show that there were no partnership assets at the time of the filing of the petition in bankruptcy. (*Crompton et al. v. Conkling et al.*, 15 N. B. R. 417; *Fed. Cas.* 3403.)

A creditor may take a decree *in rem* against property on which he has a lien, notwithstanding his debtor has been discharged as a bankrupt. (*Stoddard v. Locke et al.*, 9 N. B. R. 71.)

Where, in an action upon an undertaking on which defendants were sureties, the judgment debtor is discharged in bankruptcy before affirmation of the judgment in favor of the plaintiff on appeal, such discharge does not constitute a defense. (*Knapp et al. v. Anderson et al.*, 15 N. B. R. 816.) Where the holder of an accommodation note, knowing it to be such, signs a resolution in favor of composition, the maker of the note is not released from liability. (*Guild v. Butler*, 16 N. B. R. 847.) Where to dissolve an attachment a defendant gives an undertaking with two sureties, and more than four months after the issuance of the attachment bankruptcy proceedings are had, the discharge in bankruptcy will not prevent judgment being recovered and the sureties being bound therefor. (*Holyoke v. Adams*, 10 N. B. R. 270.) Likewise, a bankrupt's certificate of discharge, duly pleaded in an action against him in a state court, will not dissolve an attachment made by virtue of the writ in the action, more than four months prior to the defendant's commencement of proceedings in bankruptcy, which attachment may be enforced by an execution issued upon a special judgment rendered by the court in which the action was entered and prosecuted. (*Deighton v. Kelsey et al.*, 4 N. B. R. 155.)

A creditor who obtains a judgment for his debt after his debtor has been adjudicated a bankrupt and takes out execution cannot prove his debt in bankruptcy, and the judgment will not be affected by the certificate of discharge. Such creditor cannot oppose the bankrupt's discharge. (*In re Gallison et al.*, 5 N. B. R. 353; 2 *Lowell*, 72; *Fed. Cas.* 5203.)

A bankrupt court has no jurisdiction to review or modify in any way the decree of a state court granting alimony to a bankrupt's wife. The monthly payments falling due after bankruptcy are due by natural obligation and not by contract, and they are not affected by a discharge. (*In re Garrett*, 11 N. B. R. 493; 2 *Hughes*, 235; *Fed. Cas.* 5252.)

In an action to set aside a transfer of property made to defraud creditors, the fraudulent holder of the property cannot set up as a defense the debtor's discharge in bankruptcy where the debtor has waived such discharge. (*Dewey et al. v. Moyer et al.*, 16 N. B. R. 1.)

**Debts in general released by discharge.**—All debts which by their nature are provable are discharged whether they in fact could be

proved or not. (In re Kingsley, 1 N. B. R. 66; 1 Lowell, 216; 7 Amer. Law Reg. (N. S.) 423; 15 Pittsb. Leg. J. 235, 277; Fed. Cas. 7819.) Where a principal is released from a debt by his discharge in bankruptcy, he will also be released from his contingent liability to his surety for the same debt. (Halliburton v. Carter, 10 N. B. R. 359.) A bankrupt who purchases the business of another under a covenant to pay his debts and hold him harmless is released by a discharge in bankruptcy, although he falsely represents to the vendor that the debts are paid. (Brown et al. v. Broach et al., 16 N. B. R. 296.) Likewise a person conveying and covenanting that the premises are free from all incumbrances, when in fact they are subject to a mortgage, which the purchaser has to pay, is protected by a discharge by a composition. (Wells v. Lamprey, 16 N. B. R. 205.) And where land is sold and a warranty deed is given, and it is agreed in writing to pay a certain mortgage, and the seller is discharged in bankruptcy, after which the land is sold under the mortgage, the debt is discharged (Parker v. Bradford, 17 N. B. R. 485); also a debt on a bond filed by a claimant to obtain the delivery of property is released, although the bankrupt subsequently endeavored to sustain his case by false testimony. (United States v. Rob Roy, 13 N. B. R. 235; 1 Woods, 42; Fed. Cas. 16179.)

A judgment recovered in an action in *assumpsit* pending proceedings in bankruptcy is barred by a discharge. (In re Stansfield, 16 N. B. R. 268; 4 Sawy. 334; Fed. Cas. 13294.)

A surety on the bond of a United States officer is released from his liability thereon by a discharge in bankruptcy. (United States v. Throckmorton, 8 N. B. R. 309; 18 Int. Rev. Rec. 54; Fed. Cas. 16516.)

If a creditor proves his debt against a bankrupt, the only effect is that he cannot afterwards maintain a suit against the bankrupt on the debt, and proceedings pending thereon against the bankrupt, and unsatisfied judgments already obtained thereon against the bankrupt, are discharged. (In re Levy, 1 N. B. R. 66; 2 Ben. 169; 1 Amer. Law T. Rep. Rep. Bankr. 122; Fed. Cas. 8297.)

A bankrupt who purchases the business of another under a covenant to pay his debts and hold him harmless is released by a discharge in bankruptcy, although he falsely represents to the vendor that the debts are paid. (Brown et al. v. Broach et al., 16 N. B. R. 296.)

In an action by lien-holders a judgment may be rendered limiting the plaintiffs to a sale of the land, where it appears that, by reason of their discharge in bankruptcy, the defendants are released from personal liability on the judgment. (Reed v. Bullington, 11 N. B. R. 408.) Where a bankrupt has bought notes from an executor of an estate under circumstances which were held to be constructive or legal fraud, but he had been guilty of no actual fraud, and he was afterwards discharged in bankruptcy, and suit is brought against him to recover the value of the notes, the discharge is a good defense. (Neal v. Scruggs et al., Ex'rs, etc., 17 N. B. R. 102.)



A claim for damages for wrongful conversion of personal property is provable and a discharge in bankruptcy would release the bankrupt from such a claim; and his plea of bankruptcy interposed in a suit brought in a state court to recover such damages is a complete bar. (*Coles v. Roach*, 10 N. B. R. 288.)

Where, after the commencement of bankruptcy proceedings, the debtor gives a bond to dissolve an attachment issued more than four months before the commencement of proceedings, he may plead his discharge in an action upon the bond. (*Hamilton v. Bryant*, 14 N. B. R. 479; ch. 176.) Where a bankrupt, prior to bankruptcy, sells land under a covenant for indefeasible title, when in fact the wife of a former owner has a dower interest not relinquished, the claim for breach of covenant in the event of the wife surviving her husband and asserting her rights is not such an "unliquidated" or "contingent" claim as may be proved in bankruptcy, and in an action on such claim a discharge in bankruptcy is a complete defense. (*Riggin & Magwire*, 8 N. B. R. 484; 15 Wall. 549.)

A claim for a breach of warranty is such a claim as should be proved in a bankrupt court, and therefore the defendant's discharge in bankruptcy is a bar to such a claim, it having accrued prior to proceedings in bankruptcy. (*Williams v. Harkins*, 15 N. B. R. 84.)

A judgment obtained on a breach of a promise to marry is barred by the discharge of the bankrupt. (*In re Sidle*, 2 N. B. R. 77; *Fed. Cas.* 12844.)

An injunction restraining creditors from suing pending adjudication is dissolved by a debtor's discharge in bankruptcy. (*In re Thomas*, 8 N. B. R. 7; *Fed. Cas.* 13890.)

A discharge in bankruptcy is a complete bar to a suit on a claim provable under the bankrupt law, but its dismissal does not prejudice proceedings on it under that law. (*Humble v. Carson*, 6 N. B. R. 84.)

## CHAPTER IV.

### COURTS AND PROCEDURE THEREIN.

**Sec. 18. Process, pleadings, and adjudications.**—*a.* Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service cannot be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in courts of the United States.

[Act of 1867. SEC. 40. . . . That upon the filing of the petition authorized by the next preceding section, if it shall appear that sufficient grounds exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted; and may also, by its injunctions, restrain the debtor, and any other person, in the meantime, from making any transfer or disposition of any part of the debtor's property not excepted by this act from the operation thereof and from any interference therewith. . . . A copy of the petition and of such order to show cause shall be served upon such debtor by delivering the same to him personally, or leaving the same at his last or usual place of abode; or, if such debtor cannot be found, or his place of residence ascertained, service shall be made by publication in such manner as the judge may direct. No further proceedings, unless the debtor appear and consent thereto, shall be had until proof shall have been given, to the satisfaction of the court, of such service or publication; and if such proof be not given on the return day of such order, the proceed-

ings shall be adjourned and an order made that the notice be forthwith so served or published.]

Three or more creditors having provable claims against any persons, amounting in the aggregate in excess of the value of the security held by them, if any, to \$500 or over, or if all the creditors of such persons are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition (Sec. 59, b.) Petitions shall be filed in duplicate, one copy for the clerk and the other for service on the bankrupt. (Sec. 59, c.) Creditors other than original petitioners may at any time enter their appearance and join in the petition or file an answer and be heard in opposition to the prayer of the petition. (Sec. 59, f.) All process, summons and subpoenas must issue out of the court, and be tested by the clerk, and blanks, with the signature of the clerk and seal of the court, may be furnished to the referee. (Orders III.)

The rules of practice in equity adopted by the Supreme Court of the United States on January 7, 1884, and which are still in force, make the following provisions with reference to process:

7. The process of subpoena shall constitute the proper mesne process in all suits in equity, in the first instance, to require the defendant to appear and answer the exigency of the bill; and, unless otherwise provided in these rules, or specially ordered by the circuit court, a writ of attachment, and, if the defendant cannot be found, a writ of sequestration, or a writ of assistance to enforce a delivery of possession, as the case may require, shall be proper process to issue for the purpose of compelling obedience to any interlocutory or final order or decree of the court.

8. Final process to execute any decree may, if the decree be solely for the payment of money, be by a writ of execution, in the form used in the circuit court in suits at common law in actions of assumpsit. If the decree be for the performance of any specific act, as, for example, for the execution of a conveyance of land or the delivering up of deeds or other documents, the decree shall, in all cases, prescribe the time within which the act shall be done, of which the defendant shall be bound, without further service, to take notice; and upon affidavit of plaintiff, filed in the clerk's office, that the same has not been complied with within the prescribed time, the clerk shall issue a writ of attachment against the delinquent party, from which, if attached thereon, he shall not be discharged, unless upon a full compliance with the decree and the payment of all costs, or upon a special order of the court, or of a judge thereof, upon motion and affidavit, enlarging the time for the performance thereof. . . .

10. Every person, not being a party in any cause, who has obtained an order, or in whose favor an order shall have been made, shall be enabled to enforce obedience to such order by the same process as if he were a party to the cause; and every person not being a party in any cause, against whom obedience to any order of the court may be enforced, shall be liable to the same process for enforcing obedience to such orders as if he were a party in the cause.

11. No process of subpoena shall issue from the clerk's office in any suit in equity until the bill is filed in the office.

12. Whenever a bill is filed, the clerk shall issue the process of subpoena thereon, as of course, upon the application of the plaintiff, which shall be returnable into the clerk's office the next rule day, or the next rule day but one, at the election of the plaintiff, occurring after twenty days from the time of the issuing thereof. At the bottom of the subpoena shall be placed a memorandum, that the defendant is to enter his appearance in the suit in the clerk's office in or before the day at which the writ is returnable; otherwise the bill may be taken pro confesso. Where there are more than one defendant, a writ of subpoena may, at the election of the plaintiff, be issued out separately for each defendant, except in the case of husband and wife defendants, or a joint subpoena against all the defendants.

13. The service of all subpoenas shall be by delivery of a copy thereof by the officer serving the same to the defendant personally, or by leaving a copy thereof at the dwelling house or usual place of abode of each defendant, with some adult person who is a member or resident in the family.

14. Whenever any subpoena shall be returned not executed as to any defendant, the plaintiff shall be entitled to another subpoena, *toties quoties*, against such defendant if he shall require it, until the due service is made.

15. The service of all process, mesne and final, shall be by the marshal of the district, or his deputy, or by some other person specially appointed by the court for that purpose, and not otherwise. In the latter case, the person serving the process shall make affidavit thereof.

Upon the return of the subpoena as served and executed upon any defendant, the clerk shall enter the suit upon his docket as pending in the court, and shall state the time of the entry.

**Process — Jurisdiction, service.**— In general a subpoena in an equity suit cannot be served by leaving it at the "last" place of abode, but it is to be left at the existing, present, dwelling-house, or the existing, present, usual, customary place of abode. (*Hyslop v. Hoppock*, 6 N. B. R. 532; 5 Ben.

447; Fed. Cas. 6968.) But it has been held a service is sufficiently made by inquiry at the last and usual abode of a bankrupt, and upon obtaining no information as to his whereabouts, in reply to inquiries, except that "he is not in," by leaving a copy of the petition and order with one who appears and acts as if she is the mistress of the house and stating that they are for the bankrupt. (In re Derby, 8 N. B. R. 106; 6 Alb. Law J. 422; Fed. Cas. 3815; Alabama & Chattanooga R. R. Co. v. Jones, 5 N. B. R. 97; Fed. Cas. 126.) Service of the rule to show cause on the cashier of a corporation which has passed into the hands of a receiver is sufficient to enable the bankrupt court to proceed to adjudication. (Platt v. Archer, 6 N. B. R. 465; 9 Blatchf. 559; Fed. Cas. 11218.)

An order to show cause may be served personally outside the district in which the petition is filed, by any one authorized by the petitioner to make it. Publication can be had only where the party to be served cannot be found or his place of residence ascertained. (Stuart v. Hines, 6 N. B. R. 416.)

Personal service on one member of a firm out of the jurisdiction of the court in which the proceedings are pending is not sufficient service to give the court jurisdiction to adjudicate against the party so served. (Issett v. Stuart, 16 N. B. R. 191.) A corporation created by the laws of one state is not rendered liable to adjudication in bankruptcy by process served in another state, by the fact that it carries on business in the latter state, and that the process had been delivered to the officers thereof found therein. (Alabama & Chattanooga R. R. Co. v. Jones, 5 N. B. R. 97; Fed. Cas. 126.) A warrant which fails to contain a list of creditors with their respective places of residence and the amount of their respective debts is void. (In re Hall, 2 N. B. R. 68; 16 Pittsb. Leg. J. 52; Fed. Cas. 5922.)

A petition in involuntary bankruptcy was filed against a debtor. It was signed by six creditors and verified by the first five, they alleging that they verily believed that they constituted one-fourth of the creditors, which they knew to be untrue. It was held that the court upon whom such fraud was practiced had power and it was its duty to set aside any proceeds obtained by the deception. (In re Keller et al., 18 N. B. R. 10; Fed. Cas. 7647; In re Scammon, 11 N. B. R. 280; 6 Biss. 195; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 12422.)

**Pleading — The petition.**— All petitions must be printed or written out plainly, without abbreviations or interlineations, except where such may be necessary for purpose of reference. (Orders V.) As the petition in bankruptcy is in the nature of a pleading, it should set forth all the facts material to the claim made by the creditor to an adjudication, so that the debtor may be distinctly apprised of what he is called upon to answer. (In re Raynor, 7 N. B. R. 527; 11 Blatchf. 43; 1 Amer. Law Rec. 786; Fed. Cas. 11597; In re Randall et al., 3 N. B. R. 4; Deady, 557; 2 Amer. Law T. Rep. Bankr. 69; 1 Chi. Leg. News, 209; Fed. Cas. 11551; In re Chappel, 4 N. B. R. 176; Fed. Cas. 2612.) A charge of an act of bankruptcy in the alternative is not sufficient. (In re Hanibel et al., 15 N. B. R. 233; 9 Chi. Leg. News, 165;

15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152; Fed. Cas. 6023.) Where a preference is alleged it is not necessary to state that such preference was in fraud of the Bankrupt Act, but the name of the person preferred should be set forth. (In re Hadley, 12 N. B. R. 366; Fed. Cas. 5894); and where a petition sets forth a fraudulent conveyance as an act of bankruptcy, the intent to defraud should be alleged as a fact, and not as a matter of information and belief. (In re Orem & Co. v. Harley, 8 N. B. R. 62; Fed. Cas. 10567.)

It is not requisite that an agent of a petitioning creditor in bankruptcy proceedings shall set forth the authority by which he acts. (In re Cal. Pac. R. R. Co., 11 N. B. R. 193; 8 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2315.) Where the petition in bankruptcy averred that a firm were manufacturers, and that they made and delivered certain notes, etc., which were negotiated but not paid, it was held not necessary to aver that the notes were given for purposes of their manufacturing business (In re Kenyon et al., 6 N. B. R. 238); but in another case it was said that a petition based on the failure of an alleged bankrupt as a manufacturer to pay its notes, which does not state that the notes were made or passed in its alleged business, is defective. (In re Capital Publishing Co., 18 N. B. R. 319.) The allegations in the deposition in proof of the act of bankruptcy should be made upon the personal knowledge of the deponent, and should make out a *prima facie* case. Such allegations should be made by separate deposition, and not in the petition itself. (In re Hadley, 12 N. B. R. 366; Fed. Cas. 5894.)

**Amendment of petitions.**—Amendments may be allowed by the courts, but they must be printed or written, signed and verified like original petitions. (Orders XI.) Where one partner files a petition against his copartner, but omits to state the residence of his copartner, he may supply the omission (In re Vanderhoof et al., 18 N. B. R. 543; Fed. Cas. 16841; In re Jersey City Window Glass Co., 1 N. B. R. 113; 7 Amer. Law Reg. (N. S.) 419; 1 Amer. Law T. Rep. Bankr. 61; Fed. Cas. 7292); and if the proof differs from the allegations, the petition should be amended to conform to the proof (In re Houghton, 1 N. B. R. 121; Fed. Cas. 6223); also where a debtor, being insolvent, suffers his property to be taken on legal process with intent to give a preference, and the petition fails to allege the act of sufferance to have been done when the debtor was insolvent or in contemplation of insolvency, an amendment of the petition will be allowed (In re Craft, 1 N. B. R. 89; 2 Ben. 214; Fed. Cas. 3316); or where the name of a creditor is stated in the petition asserting a claim by a proper averment, but omitting the amount, the claim may be amended by adding the amount, if done in good faith (In re Blair et al., 17 N. B. R. 492; 10 Chi. Leg. News, 278; 25 Pittsb. Leg. J. 123; Fed. Cas. 1481); or where the amendment is merely the formal assertion of an averment which appeared in substance in the petition, and of which evidence was received at the trial without objection (In re Craft, 2 N. B. R. 41; 6 Blatchf. 177; Fed. Cas. 3317; In re McKibben, 12 N. B. R. 97; Fed. Cas. 8859); or

a bankrupt may amend his petition after adjudication so as to bring in his copartner in order to effect a discharge of copartnership debts (In re Little, 1 N. B. R. 74; 2 Ben. 86; 15 Pittsb. Leg. J. 268; Fed. Cas. 6390); and an amendment introducing six judgment creditors, after the first meeting of creditors, has been permitted. (In re Ratcliffe, 1 N. B. R. 98; 25 Leg. Int. 92; 6 Phila. 466; 1 Amer. Law T. Rep. Bankr. 47; 15 Pittsb. Leg. J. 343; Fed. Cas. 11578.)

In general, petitioning creditors may amend their petition on the trial (Hardy et al. v. Binger et al., 4 N. B. R. 77; Fed. Cas. 6057), and creditors whose rights accrue after admitted proof of claim may amend their petition. (In re Jones, 3 N. B. R. 20; Fed. Cas. 7447.) A defective petition may be amended after argument and before judgment (In re Waite et al., 1 N. B. R. 84; 1 Lowell, 207; Fed. Cas. 17044); also where a jury has been called but not sworn. (May v. Harper & Atherton, 4 N. B. R. 156; 4 Brewst. 253; Fed. Cas. 9333.)

The court may allow supplemental affidavits or proofs to be filed, if the affidavits to the petition or the depositions as to indebtedness and acts of bankruptcy are not sufficient. (In re Hanibel et al., 15 N. B. R. 233; 9 Chi. Leg. News, 165; 15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152; Fed. Cas. 6023.)

A voluntary bankrupt who, after considerable delay, desires to amend his petition in matters affecting the jurisdiction of the court, should state in his application why his petition was not originally in proper form, and why he did not apply sooner, and should file with his application an affidavit that the facts necessary to give jurisdiction under the statute existed at the time the petition was filed, and he should state specifically what words he desires to strike out and what to insert. (In re Wood, 13 N. B. R. 96; 6 Ben. 339; 1 N. Y. Wkly. Dig. 866; Fed. Cas. 17935.)

**When amendments denied.**—Amendments will not be permitted for the purpose of introducing into the petition entirely new acts of bankruptcy (In re Reed et al., 1 N. B. R. 137; 1 Amer. Law T. Rep. Bankr. 79; Fed. Cas. 11644); nor will creditors who have recklessly and falsely made and sworn to a petition, knowing it to be false, be permitted to have others join in and carry it on (In re Keiler et al., 18 N. B. R. 10; 6 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647); and an involuntary petition cannot be amended by adding a new party after all the testimony has been taken, and the case is on hearing before the court. (In re Pitt et al., 14 N. B. R. 59; 8 Ben. 389; 23 Pittsb. Leg. J. 196; Fed. Cas. 11188.)

**Principles governing allowance.**—The district court, in allowing amendments to bankruptcy petitions, should be governed by substantially the same principles as those which govern the allowance of amendments in similar cases in other courts. (In re Reed et al., 1 N. B. R. 137; 1 Amer. Law T. Rep. Bankr. 79; Fed. Cas. 11644.)

**When special reasons required.**—Special reasons are required for the allowance of amendments to sworn petitions or in other pleadings which are required to be verified by the oath of the party; and where the object is to introduce new facts or to change essentially the grounds of the prosecution or defense, the courts are disinclined to allow such amendments except for very special reasons, and in cases where they are clearly required in furtherance of justice, and are applied for without unreasonable delay (*In re Reed et al.*, 1 N. B. R. 137; 1 Amer. Law T. Rep. Bankr. 79; Fed. Cas. 11644; *In re Keiler et al.*, 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647); though to the end that thorough justice may be done to all parties, great latitude of amendment will be permitted, up to the final discharge in bankruptcy. (*In re Pierson*, 10 N. B. R. 193; Fed. Cas. 11154.)

**One petitioning creditor cannot object to amendment.**—A creditor joining in an involuntary petition in good faith cannot afterwards object to an amendment which is necessary to the prosecution thereof. (*In re Sargent*, 13 N. B. R. 144; 1 N. Y. Wkly. Dig. 435; Fed. Cas. 12361.)

**Objections to amended petitions.**—Where an amended petition is faulty, objection may be taken to it even though no objection was made to the same fault which the original petition contained. (*In re Western Savings Trust Co.*, 17 N. B. R. 413; 4 Sawy. 190; Fed. Cas. 17442.)

**Practice in suits by assignees.**—In suits by an assignee his representative character need not be averred in the pleadings. If a duly certified copy of the assignment be put in evidence, it is not necessary to prove all the steps in the proceedings. A statement in a complaint that the plaintiff is assignee in bankruptcy may be treated as surplusage or as *descriptio personæ*. (*Dambmann v. White et al.*, 12 N. B. R. 438.) In a suit by the assignee to recover of a creditor money paid by the bankrupt by way of preference, the declaration must allege that the payment was made within four months before the filing of the petition in bankruptcy or it will be bad on demurrer. (*Maurer v. Frantz*, 4 N. B. R. 142; *Blau v. Brookmire et al.*, 4 N. B. R. 57.) Where an assignee in bankruptcy files a bill in equity to set aside conveyances made in fraud of creditors, alleging that the deeds were without consideration, and were designed merely to defraud creditors, such allegations are sufficient, and it is not necessary to charge the circumstances which may conduce to prove the general charge. (*Johnson, Ass., et al. v. Helmstaeder et al.*, 19 N. B. R. 71.)

**Practice in suits in general.**—Where plaintiff seeks to recover a preference, it is sufficient to make the allegations in accordance with the law as it was when the preference was given. (*Warren et al. v. Garber*, 15 N. B. R. 409; 1 Hughes, 365; Fed. Cas. 17196.) Under a general averment that the plaintiff was in possession of his own property, proof may be given that he acquired the title by means of proceedings in bankruptcy. The complaint need not state how the plaintiff acquired title. (*Dambmann v. White et al.*, 12 N. B. R. 438.) The sale of goods by a



vendor, who was afterward adjudicated bankrupt, was attacked on the ground that it was made by an insolvent, and that the vendee had reasonable cause to believe him insolvent. The court held that the bill must allege that the defendant knew the fraud and such knowledge must be proved. (*Crump, Ass., v. Chapman*, 15 N. B. R. 571; 1 *Hughes*, 183; 24 *Pittsb. Leg. J.* 189; *Fed. Cas.* 3455.) Where a resolution of composition was approved, which provided that it should be void unless consummated within a certain time, a creditor having brought action on his original claim, and the defendant set up such composition agreement and its performance as to the creditor, the answer was not sufficient, as it did not aver the consummation as to all the creditors. (*Evans et al. v. Gallantine*, 18 N. B. R. 811.) A restraining order directed to the debtor and "all other persons" need not contain the names of those persons if the order is served upon the persons to be restrained. (*In re Sady Bryan Mining Co.*, 6 N. B. R. 252; *Fed. Cas.* 7980.)

A proceeding in bankruptcy from the time of its commencement until the final settlement of the estate is but one suit. (*Sandusky v. First National Bank of Indianapolis*, 12 N. B. R. 176; 23 *Wall.* 289.)

**Demurrer.**—A demurrer will be sustained to a bill to set aside a conveyance in fraud of creditors, to the joinder of the purchaser of the property, without averring that he had knowledge of the fraud. (*Pratt v. Curtis*, 6 N. B. R. 189; *Fed. Cas.* 11875.) A demurrer to a bill in equity brought by the assignee, on the ground that the complainant has a complete remedy at law, will be overruled where the facts show that questions of fraud, trust and partnership are all involved in the case at issue. (*Taylor, Ass., v. Rasch & Bernart*, 5 N. B. R. 899; 4 *Amer. Law T.* 201; *Fed. Cas.* 18801.) If a demurrer to an intervening petition is overruled, the demurrant is entitled to answer and be heard on the merits. (*Jordan, Ass., v. Downey*, 12 N. B. R. 427.) Objection to an averment on the grounds of insufficiency in setting forth an act of bankruptcy should not be made by demurrer, but by an answer. (*In re Orem & Co. v. Harley*, 3 N. B. R. 62; 2 *Balt. Law Trans.* 943; *Fed. Cas.* 10567.) In an action by an assignee to recover real estate, claiming title by virtue of the bankruptcy proceedings, an answer by the defendant setting forth a purchase from the bankrupt, and denying the bankruptcy and impeaching the adjudication, cannot be replied to by demurrer; and the defendant cannot be denied the right to establish by competent evidence that the adjudication was void. (*Stuart v. Aumeller*, 8 N. B. R. 541.)

b. The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow.

Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition. (Sec. 59*f*.)

**Defenses.**—A respondent may set forth as many defenses to the petition as he has, but each defense must be pleaded separately. (In re Quimette, 8 N. B. R. 140; 1 Sawy. 47; Fed. Cas. 10622.) But where several distinct allegations of bankruptcy are set forth in the petition, if respondent does not file his answer of denial in the nature of a special plea to each allegation, he may deny each distinct charge in a general manner. (In re Hawkeye Smelting Co., 8 N. B. R. 385.) In the court of bankruptcy pleading must be special. Hence, a mere general denial of the intent with which an act relied upon as an act of bankruptcy is alleged to have been done is not a good defense to the charge; but the respondent must also allege and prove with what intent he did such act. (In re Silverman, 4 N. B. R. 173; 13 Int. Rev. Rec. 52; Fed. Cas. 12855.) The necessary effect of a payment by one creditor to the exclusion of others is to give a preference, and judgment may be given against a respondent whose answer sets up no other matter of defense than the denial of the intent, as upon failure to answer. (In re Silverman, 4 N. B. R. 173; 13 Int. Rev. Rec. 52; Fed. Cas. 12855.)

Unless the papers show a case in which the court may exercise a discretion as to granting or withholding it, leave to file a supplemental answer must be granted. (Holyoke et al. v. Adams et al., 13 N. B. R. 413.)

An answer to a creditor's petition denying the commission of the acts of bankruptcy, and averring that they should not be declared bankrupts for any cause alleged in the petition, amounts to the general issue and no replication is necessary. (Welch v. Dunham, 2 N. B. R. 9; 2 Ben. 488; 1 Amer. Law T. Rep. Bankr. 89; Fed. Cas. 4143.) In an answer a general denial amounts to no more than a denial of a conclusion of law. (Lothrop v. Drake et al., 13 N. B. R. 472; 91 U. S. 516.)

If any allegation is to be taken as true simply because it is not denied, it is only an allegation of some fact which is presumed to be within the knowledge of the party answering. (White v. Jones, 6 N. B. R. 175; Fed. Cas. 17550.)

A defendant who, on the return day of the rule to show cause why he should be adjudged bankrupt, appears, but neither files a plea, demurrer nor demand for trial by jury, but obtains a continuance, is not entitled on the day to which the case is continued to demand trial of the issues by a jury, but the court may permit a plea to be filed and the issues to be tried by the court. (In re Sherry, 8 N. B. R. 142.)

A bankrupt moved to set aside his default for not appearing on the return day of the order to show cause, on the ground that the debt of the petitioning creditor was not provable, as it was based wholly upon an unlawful consideration. It was held that the motion came too late and without any excuse; that the defense, when made by the debtor himself, founded as it is in violation of the law by himself, is not to be favored by the court. (In re Neilson, 7 N. B. R. 505; Fed. Cas. 10090.) In order that the opposite party may be heard and the court may determine whether there has been inexcusable laches, or whether reasons ap-

pear which are recognized as giving authority for refusing the motion, the defendant should apply by motion for leave to file a supplemental answer. (Holyoke et al. v. Adams et al., 18 N. B. R. 418.)

**Plea of discharge.**— See DISCHARGE, *ante*, pp. 139, 140.

**Jurisdiction.**— A creditor attacking the jurisdiction of the bankrupt court need not first file formal proof of his debt, for this would import a recognition of the jurisdiction. He must, however, show that he is a creditor and that he has an interest to protect. (In re Boston H. & E. R. R. Co., 6 N. B. R. 209; 9 Blatchf. 101; 6 Amer. Law Rev. 365; Fed. Cas. 1677.) Where the want of jurisdiction appeared on the face of the petition, but the respondents consented to the jurisdiction, it was held that the court should take notice of the point of its own motion. (In re Hopkins v. Carpenter et al., 18 N. B. R. 339; Fed. Cas. 6686.) Where a voluntary bankrupt desires to amend his petition in a matter affecting the jurisdiction of the court, after a long delay, his application should show why the petition was not originally in proper form, why the amendment was not applied for sooner, and should be accompanied by an affidavit that, at the time the petition was filed, the facts necessary to give jurisdiction existed. (In re Wood, 18 N. B. R. 96; 6 Ben. 339; 1 N. Y. Weekly Dig. 866; Fed. Cas. 17935.)

A party having once appeared cannot withdraw appearance on the ground that the court has not jurisdiction, but must raise such question by demurrer. (In re Ulrick et al., 8 N. B. R. 84; 8 Ben. 355; Fed. Cas. 14327.)

A state court will not grant an injunction to restrain a party from applying for the benefit of the Bankrupt Act of the United States. (Fillingim v. Thornton, 13 N. B. R. 92.)

c. All pleadings setting up matters of fact shall be verified under oath.

**Verification.**— The provisions of the statute as to verification of the petition must be strictly followed. It is a matter of substance and right, and is not to be dispensed with under cover of an apparent compliance with the act. (In re Keiler et al., 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647.) The affidavit to a petition, if defective in form, may be amended so as to conform to law. (In re Sargent, 18 N. B. R. 144; 1 N. Y. Weekly Dig. 435; Fed. Cas. 12361.) When several join in a petition in separate and distinct rights, each stands individually, and a verification by or on behalf of each petitioner is required. (In re Simmons, 10 N. B. R. 253; 1 Cent. Law J. 440; Fed. Cas. 12864.) If the name of a petitioner in the body of a petition is omitted from the verification, the petition is imperfect; in a case free from other difficulties, supplementary proof may, in the discretion of the court, be received *nunc pro tunc* to establish the authority of the agent to sign the petition. (In re Rosenfield, 11 N. B. R. 86; 8 Amer. Law Rec. 724; 1 Cent. Law J.

583; Fed. Cas. 12061.) When the agent is clothed with full authority and is able to present the proper authentication of the petition required by the forms, such petition should be entertained, although the petitioning creditor does not, in person, sign or swear to it. (In re Raynor, 7 N. B. R. 527; 11 Blatchf. 43; 1 Amer. Law Rec. 736; Fed. Cas. 11597. But see In re Butterfield, 6 N. B. R. 257.) Upon a petition by a corporation, a verification by an agent not an officer of the corporation is sufficient, but the authority of the agent must be set forth in the affidavit, or otherwise established. (In re Hanibel et al., 15 N. B. R. 233; 9 Chi. Leg. News, 165; 15 Alb. Law J. 271; 24 Pittsb. Leg. J. 152; Fed. Cas. 6023.) So long as it appears that the petitioning creditor authorized the institution of the proceedings in his behalf and so became liable for costs, the matter of signing and authentication is purely formal and unimportant to any right of the debtor. (In re Raynor, 7 N. B. R. 527; 11 Blatchf. 43; 1 Amer. Law Rec. 736; Fed. Cas. 11597.) An attorney, to verify a petition, affidavit or proof, must show his authority. (In re Sargent, 18 N. B. R. 144; 1 N. Y. Weekly Dig. 435; Fed. Cas. 12361.) And where a petition is verified by an attorney, the non-residence of his principal should be alleged directly and not by way of recital. (In re Hadley, 15 N. B. R. 366; Fed. Cas. 5894.) Creditors who sign a petition must be held to good faith in a matter, and cannot recklessly file a petition for the purpose of making the alleged bankrupt file a statement of his creditors. (In re Scammon, 11 N. B. R. 280; 6 Biss. 195; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 12420.)

It was held under the act of 1867, as amended, although the verification of the petition was defective, a case was pending in bankruptcy so that a composition might be proposed and effected, and a defect in the verification of the creditor's petition was waived by the debtor, in the absence of fraud, when he called a meeting in composition. (*Ex parte Jewett*, 11 N. B. R. 443; 2 Lowell, 393; Fed. Cas. 7303.)

In courts where answers were verified in common-law actions the answer to involuntary petitions in bankruptcy must always be verified. (In re Findlay, 9 N. B. R. 83; 5 Biss. 490; 6 Chi. Leg. News, 94; Fed. Cas. 4789.) A plea setting up a discharge in bankruptcy, if a plea in abatement, is bad if not sworn to. If such plea is in bar, when the notes and bond sued upon were given after bankruptcy, it is sufficient. (*Beeson et al. v. Howard*, 11 N. B. R. 486.)

*d.* If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this act, and makes the adjudication or dismiss the petition.

[Act of 1867. SEC. 41. *And be it further enacted*, That on such return day or adjourned day, if the notice has been duly served or published, or shall be waived by the appearance and consent of the debtor, the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of such alleged bankruptcy.]

**Determination of issues.**—If the respondent desires to controvert the petition, he should, on the return day of the order to show cause, appear before the court and allege that the facts set forth in the petition are not true, and demand a hearing by the court, or a trial by jury, and it has been held that the court should make a record of such allegation and demand; but no portion of these proceedings previous to the making of the record by the clerk is required to be in writing, except the demand for a trial by jury. (In re Heyette, 8 N. B. R. 332; Fed. Cas. 6444.) Courts have no authority to exercise discretion in the entertainment of actions over which they are given jurisdiction when properly applied to for the exercise thereof. (Cook v. Waters et al., 9 N. B. R. 155.) In answer to an order to show cause, the burden is on the respondent to prove that the facts set forth in the petition are not true, in order to defeat an adjudication of bankruptcy against him. (In re Price & Miller, 8 N. B. R. 514; Fed. Cas. 11411.) If a cause be heard on petition and answer, the statements in the answer will be deemed to be true. (Jordan, Ass., v. Downey, 13 N. B. R. 427.)

In ordinary cases of involuntary proceedings in bankruptcy against corporations, it is to be inferred, barring legal restrictions, that they will have power to appear by counsel, and that the usual confidence will exist between counsel and client, and that the counsel will act within the scope of their authority. (Leiter et al. v. Payson, 9 N. B. R. 205; 6 Chi. Leg. News, 157; Fed. Cas. 8226.)

Where parties to bankruptcy proceedings appear on the return day or adjourned day and join issue, and no further proceedings or adjournment is had, the case is to be considered as pending from day to day until disposed of. (In re Buchanan, 10 N. B. R. 97; Fed. Cas. 2073.) A bankrupt who takes issue on facts alleged in the petition and demands a trial by jury waives his right to object to the petition on the grounds of irregularity. (In re McNaughton, 8 N. B. R. 44; Fed. Cas. 8912.)

The adjourned day on which, if the petitioning creditor does not appear and proceed to an adjudication, another creditor may appear and prosecute, is any day to which the proceedings on the order to show cause may be adjourned for the purpose of inquiring into the allegations

of the acts of bankruptcy. (In re Lacey, Downs & Co., 10 N. B. R. 477; Fed. Cas. 7965.) A petitioning creditor may offer proof tending to show the debtor's insolvency, and the debtor must explain the evidence, as he is best acquainted with the condition of his own affairs. The petitioner is not obliged to make full proof of the insolvency. (In re Oregon Bulletin Printing and Publishing Co., 13 N. B. R. 503; 1 Cin. Law Bul. 87; Fed. Cas. 10559.)

A bankrupt court has no authority to deprive the assignee of the possession of the bankrupt's property without due process of law, unless the parties consent to a trial by the court. (Wood Mowing and Reaping Machine Co. v. Brooke, 9 N. B. R. 395; 2 Sawy. 576; Fed. Cas. 17980.) Where the petitioning creditor, the bankrupt, and all the creditors who had proved their debts, with a single exception, desired the court to dismiss the entire proceedings, it was held that the district court had power so to do, and the proceedings were dismissed. (In re Miller, 1 N. B. R. 105; 1 Amer. Law T. Rep. Bankr. 121; Fed. Cas. 9553.) A judge who has been a depositor in an insolvent banking institution, but who has sold his claim, is not thereby disqualified from sitting in the matter, although the motive on the part of the purchaser of the claim may have been to remove the disqualification. (In re John Sime & Co., 7 N. B. R. 407; 2 Sawy. 320; 5 Pac. Law Rep. 217; Fed. Cas. 12860.)

Where the court is without jurisdiction, no voluntary act of the defendant can give such jurisdiction, and the point can be raised even after appearance and answer. (Jobbins v. Montague, 6 N. B. R. 509; Fed. Cas. 7330.)

*e.* If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

*f.* If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

*g.* Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

[Act of 1867. SEC. 42. . . . That if the facts set forth in the petition are found to be true, or if default be made by the debtor to appear pursuant to the order, upon due proof of service thereof being made, the court shall adjudge the debtor to be a bankrupt, and, as such, subject to the provisions of this act, and shall forthwith issue a warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his own petition.]

The referee exercises the powers of the judge for taking possession of and releasing the property of the bankrupt in the event the clerk issues a certificate showing the absence of the judge from the judicial district or the division of the district, or his sickness or inability to act. (Sec. 88—8.)

**Adjudications.**—The petition, whether voluntary or involuntary, adjudication and warrant, give the court full and complete jurisdiction for all purposes whatsoever. (In re Archenbrow, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 504.) Where a petitioner in bankruptcy fails to attend before the register on the day fixed in the order of reference, he may, nevertheless, be adjudicated a bankrupt within a reasonable time thereafter. (In re Hatcher, 1 N. B. R. 91; 1 Amer. Law T. Rep. Bankr. 48; Fed. Cas. 6210.) It must be proved by legal evidence that the facts set forth in the petition are true before a debtor can be brought into court to show cause against the same, or be in any manner disturbed in his affairs by reason of the filing of the petition. (In re Rogers, 10 N. B. R. 444; 1 Cent. Law J. 470; Fed. Cas. 12008.) In cases of involuntary bankruptcy, an order of the court of bankruptcy is necessary to adjudge the party proceeded against a bankrupt, and a warrant cannot issue against his property until such an order has been made. (Maxwell v. Faxton, 4 N. B. R. 60.) Where a decree is not announced and delivered by the judge until a date subsequent to the one on which it was signed, it only takes effect from the latter date. (In re Boston, H. & E. R. R. Co., 6 N. B. R. 222; 9 Blatchf. 409; 6 Amer. Law Rev. 582; Fed. Cas. 1678.) An adjudication of bankruptcy is not a conclusive finding of a fact which tends to defeat the jurisdiction of the court over the alleged bankrupt. (In re Goodfellow, 3 N. B. R. 114; 1 Lowell, 510; 8 Amer. Law T. Rep. Bankr. 69; 1 Amer. Law T. Rep. Bankr. 179; Fed. Cas. 5536.)

The adjudication of bankruptcy is in the nature of a statute execution for all the creditors, and the assignee, as their representative, may enforce against the debtor every right a judgment creditor could enforce. (Barnewall et al., Ass., v. Jones et al., 14 N. B. R. 278; Fed. Cas. 1027.) In

voluntary petitions in bankruptcy, the filing of the petition terminates the right of the bankrupt to dispose of his property, while in involuntary petitions such right ceases upon adjudication. (In re Dillard, 9 N. B. R. 8; 2 Hughes, 190; 6 Amer. Law T. Rep. 490; 21 Pittsb. Leg. J. 82; Fed. Cas. 3912; *Maxwell v. Faxton*, 4 N. B. R. 60.) Where a petition for adjudication contains a prayer for an injunction restraining the bankrupt from paying out money, which is granted, the injunction fails when the debtor is adjudged bankrupt. (In re Kintrig, 3 N. B. R. 52; Fed. Cas. 7833.) An adjudication against an infant who does not appear by a guardian *ad litem* cannot be upheld; and the ratification of such an adjudication by the minor after becoming of age cannot be construed as an affirmation of the debt on which it was based. (In re Derby, 8 N. B. R. 106; 6 Alb. Law J. 423; Fed. Cas. 3815.)

Where a court reinstates a proceeding in bankruptcy without notice to or appearance of the debtor, such reinstatement is without authority, and an adjudication following it is absolutely void, and the sheriff will not be protected by an order issued therein directing the payment of money to an assignee. (*Gage et al. v. Gage*, 15 N. B. R. 145.)

In the absence of fraud the original adjudication is conclusive on all creditors, and cannot be disputed upon the question of granting a discharge (In re Ordway Brothers, 19 N. B. R. 171; 19 Alb. Law T. 482; Fed. Cas. 10552); nor can it be assailed in a collateral action. (*Sloan v. Lewis*, 12 N. B. R. 173; 22 Wall. 150.)

**When adjudication will not be set aside.**—An adjudication will not be set aside on the ground that the proper portion of creditors did not unite in the petition, unless there be fraud, bad faith or collusion in obtaining it (In re Funkenstein, 14 N. B. R. 213; 3 Sawy. 605; 8 Chi. Leg. News, 345; 3 Cent. Law J. 448; 3 N. Y. Wkly. Dig. 92; Fed. Cas. 5158); nor because of the co-operation of the debtor in securing creditors, by lawful means, to unite in an involuntary petition (In re Duncan et al., 14 N. B. R. 18; 8 Ben. 365; Fed. Cas. 4131); nor for the reason that, on the filing of an involuntary petition, debtor defaulted (In re Hopkins, 18 N. B. R. 396; 26 Pittsb. Leg. J. 120; Fed. Cas. 6684); nor because the petition was procured by bankrupt himself as a voluntary one, to obviate the necessity of obtaining the assent of the requisite number and value of creditors in case of inadequacy of assets, where the required number of creditors have signed the petition. (In re Matot et al., 16 N. B. R. 485; 5 N. Y. Wkly. Dig. 529; Fed. Cas. 9282.) Upon a voluntary petition alleging that the bankrupts composed the firm of G. & W., they were adjudicated. Two years later it was held in a state court that one A. was a general partner in the firm. Afterwards a petition was filed to set aside the adjudication. The court held that as an interval had elapsed since the adjudication and rights of other parties had arisen under and adapted to it, the application should be denied. (In re Griffith et al., 18 N. B. R. 510; 26 Pittsb. Leg. J. 140; Fed. Cas. 5320.)



A stockholder of a corporation will not be heard, after the lapse of nearly a year, to impeach the correctness of an adjudication in bankruptcy, he knowing all the time all the facts in the case and knowing of the proceedings in bankruptcy. (In re Baltimore County Dairy Ass'n, 11 N. B. R. 258; 2 Hughes, 250; 2 Md. Law Rep. 297; Fed. Cas. 828.)

**Contest of adjudication.**—An adjudication in bankruptcy may be contested by an attaching creditor (In re Jack, 18 N. B. R. 206; 4 Amer. Law Rec. 453; 1 Woods, 549; Fed. Cas. 7119) on the ground that, though not a party to bankruptcy proceedings, the requisite number and amount of creditors have not joined in the petition. (In re Hatje, 12 N. B. R. 548; 6 Biss. 436; Fed. Cas. 6215.) The receiver of a corporation which has been adjudicated a bankrupt on petition of a trustee is entitled to be heard on a motion to set aside the adjudication. (In re Atlantic Mutual Life Insurance Co., 16 N. B. R. 541; 9 Ben. 280; 16 Alb. Law J. 453; 24 Int. Rev. Rec. 18; Fed. Cas. 628.) It is competent for a corporation or an individual against whom a petition was filed, where the attorney for such corporation or individual appeared and gave any waiver of time or other right and admitted the charge brought against it, to appear within a reasonable time and move the court to have the proceedings set aside, providing there has been no unusual delay. (In re Republic Ins. Co., 8 N. B. R. 817; Fed. Cas. 11706.) An adjudication was set aside where debtor failed to comply with the requirements of an act passed the day the petition was filed. (In re Carrier & Baum, 13 N. B. R. 208; 23 Pittsb. Leg. J. 57; Fed. Cas. 2443.) Under the act of 1867 it was held that the fact that the petitioning creditor and the debtor are brothers warrants the court in scrutinizing the claim closely, but not in inferring fraud from it alone. (In re Mendelsohn, 12 N. B. R. 533; 3 Sawy. 842; Fed. Cas. 9420.)

**Practice in proceedings for adjudication.**—Another creditor may intervene and be permitted to prosecute the original petition where the court is satisfied that the original petitioning creditor does not intend to prosecute the matter further, and the pending application of the original creditor to discontinue the proceedings is sufficient evidence in that regard (In re Buchanan, 10 N. B. R. 97; Fed. Cas. 2073); but the application of a creditor for an adjudication upon the petition of another creditor cannot be made after the return or adjourned day. (In re Olmsted, 4 N. B. R. 71; Fed. Cas. 10505.)

**Sec. 19. Jury trials.**—*a.* A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the

time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

b. If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

[Act of 1867. Sec. 41. . . . The court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of such alleged bankruptcy.]

Whenever an alleged bankrupt denies the allegation of insolvency, he must appear in court and submit to an examination, and in case he fails to so attend, the burden of proving his solvency rests upon him. (Sec. 3, d.) The right of trial by jury extends also to cases where the defendant is charged with committing an offense in violation of the provisions of this act. (Sec. 19, c.)

The writ of subpoena is issued at the time of filing the petition and is returnable in fifteen days, unless such time is extended by the judge (sec. 18, a), and the bankrupt or any creditor may appear and plead within ten days after the return day, or within such further time as the court may allow. (Sec. 18, b.)

For the acts of bankruptcy, and the issue of solvency as to which jury trials are specifically provided for, see section 3, a, b, c and d. There are few decisions among the old cases bearing on the particular provisions of this section. The following cases are given as having a possible bearing by analogy: A defendant who files a demurrer to the whole petition will not be allowed, after such demurrer is overruled, to file a general answer or denial of all the acts of bankruptcy alleged and demand a jury trial of the issues so raised. (*In re Benham*, 8 N. B. R. 94.) Issues of fact raised in summary proceedings may be tried by jury. (*Bill, Ass., v. Beckwith*, 2 N. B. R. 82; 1 Chi. Leg. News, 103; Fed. Cas. 1406.) A jury trial may be allowed to determine the amount of rent due which accrued while the assignee occupied the premises. (*Buckner v. Jewell*)

et al., 14 N. B. R. 286.) The rule that every one is presumed to contemplate the necessary consequences of his acts is a presumption of fact, and where there are circumstances in a case tending to show that a party did not, in paying a certain creditor, in fact intend to prefer him, the question as to the actual intent may be left to the jury, notwithstanding the party was insolvent, and the necessary effect of his payment was to prefer. (In re Seeley, 19 N. B. R. 1; Fed. Cas. 12628.) A court may submit a question as to the existence of a partnership to the jury instead of charging them as a matter of law, as the court can take a matter from the jury whether a point is undisputed or not. (In re Jelsh et al., 9 N. B. R. 412; Fed. Cas. 7257.) It is a question of fact for the jury whether or not, at the time a creditor took an assignment of property from the debtor, the creditor knew or had reason to know the debtor was insolvent. (Ecker v. McAllister, 17 N. B. R. 42.) The question of inadequacy of price, as an evidence of fraud in a sale by an insolvent vendor, should be left to the jury. (Rhoads v. Blatt, 16 N. B. R. 32.) Where a bankrupt had permitted creditors to take goods from his store, and had made a general assignment for benefit of creditors just preceding his bankruptcy, and no explanations of such acts were offered, he is conclusively presumed to have intended to prefer creditors, and there was no question for the jury. (In re Seeley, 19 N. B. R. 1; Fed. Cas. 12628.) A respondent who does not file his answer until after the expiration of the rule to show cause cannot demand that the issues thus raised shall be tried by a jury. (In re Gebhardt, 8 N. B. R. 63; Fed. Cas. 5294.) A defendant who appears, but neither pleads, demurs nor demands trial by jury, but obtains a continuance, cannot then demand trial by jury, but the court may permit a plea to be filed, which shall be tried by the court. (In re Sherry, 8 N. B. R. 142.) Whether a judgment is or is not rendered for fraud is not a question for a jury, but is to be determined by inspection of the record. (Flanagan v. Pearson, 14 N. B. R. 37.)

c. The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

By U. S. Rev. Stats., sec. 566, the trial of issues of fact in all causes, except cases in equity and cases in admiralty and maritime jurisdiction, shall be by jury. By sec. 648 the trial of issues of fact in the circuit courts shall be by jury, except in cases of equity and of admiralty and maritime jurisdiction, and except as otherwise provided in proceedings in bankruptcy, etc. Sec. 649 provides that issues of fact in civil cases in any circuit court may be tried and determined by the court

without the intervention of a jury, whenever the parties file a stipulation in writing waiving a jury. The finding of the court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury.

**Sec. 20. Oaths, affirmations.**—*a*. Oaths required by this Act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

[Act of 1867. SEC. 11. . . . And shall annex to his petition a schedule, verified by oath before the court, or before a register in bankruptcy or before one of the commissioners of the circuit court. . . .]

SEC. 22. . . . To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation, before the proper register or commissioner. . . .]

Any person making a false oath in relation to any proceeding in bankruptcy is liable to be punished by imprisonment for a period of two years. (Sec. 29*b*.) For persons who are authorized to administer oaths, see note to section 21*b*.

A notary public before whom proof of debt is made must authenticate the same by his official seal as well as his signature. A seal used in common with others will not answer. (In re Nebe, 11 N. B. R. 239; Fed. Cas. 10073.) The requisites of a notarial seal are determined by the law of the locality from which the official derives his authority. In the absence of express legislation, it need not contain the name of the official. It is the seal, and not its composition or character of words and devices, which raises the presumption of official character of which the courts take judicial notice. The presumption is that it is the official seal of the person it purports to be, and who subscribes the jurat. (In re William W. Phillips, 14 N. B. R. 219; 8 Chi. Leg. News, 409; 22 Int. Rev. Rec. 306; Fed. Cas. 11093.)

The provisions of the statute as to verification of the petition must be strictly followed. It is a matter of substance and right, and is not to be dispensed with. (In re Keiler et al., 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647.) The court has no discretion to refuse to receive and file a proof of debt which appears on its face to have been taken by a proper officer and to be correct in form and substance. (In re Merrick, 7 N. B. R. 459; Fed. Cas. 9463.)

The verification of a schedule and inventory by a bankrupt is an affidavit and may be sworn to before a notary public. (In re John W. Bailey, 15 N. B. R. 48; Fed. Cas. 727.) A debt against a bankrupt's estate may be proven before a United States commissioner, although the bankrupt and the creditor reside in the same judicial district. (In re Sheppard, 1 N. B. R. 115; 7 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; Fed. Cas. 53.) The form of oath prescribed for proving debts in bankruptcy need not be followed in voting upon resolutions for composition. (Ex parte Morris, 12 N. B. R. 170.)

b. Any person conscientiously opposed to taking an oath may, in lieu thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

[Act of 1867. Sec. 48. . . . The word "oath" shall include "affirmation."]

**Sec. 21. Evidence.**—a. A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the state in which the proceedings are pending, to appear in court or before a referee or the judge of any state court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act.

[Act of 1867. Sec. 7. . . . Parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto, in case of default in attendance under any writ of subpoena. . . .]

**Sec. 22.** . . . The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt to be proved.

**Sec. 26.** . . . That the court may, on the application of the assignee in bankruptcy, or of any creditor, or with-

out any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claims from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a register in bankruptcy, for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailor, or any officer in whose custody he may be, or may direct the examination to be had, taken, and certified at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court. The bankrupt shall at all times, until his discharge, be subject to the order of the court.

Sec. 38. . . . Evidence or examinations in any of the proceedings under this act may be taken before the court, or a register in bankruptcy, *viva voce* or in writing, before a commissioner of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony in the same manner as in suits in equity in the circuit court.

This gives full opportunity to all parties concerned in bankruptcy proceedings to obtain desired testimony irrespective of the residence of the witnesses. Under this provision it would seem that where the witnesses cannot appear before the court or referee having jurisdiction of the case, they may be required to appear before a referee or judge of a state court where they may for the time be residing. During the examination of the bankrupt or other proceedings, the referee may authorize the employment of stenographers, upon the application of the trustee, at the expense of the estate, at a compensation not to exceed ten cents per folio for reporting and transcribing the testimony. (Sec. 38.)

Failing to obey or resisting any lawful order, after having been subpoenaed, or, upon appearing, refusing to take the oath as a witness, or refusing to be examined as a witness according to law, before the referee, subjects one to contempt proceedings and renders him liable to punishment. (Sec. 41.) Courts of bankruptcy may enforce obedience to all lawful orders by fine and imprisonment (sec. 2—13), and punish person for contempt committed before referees. (Sec. 2—16.) Provision for the method of taking testimony is found in Orders 22 of the Supreme Court.

**Admissibility of evidence.**—It is admissible to introduce, in a trial of the same party for the same offense, the examination before an examining court of a witness who has since died (*United States v. Penn*, 13 N. B. R. 464; *Fed. Cas.* 16025); to produce evidence of the bankruptcy of the makers of the notes in a suit by assignees of certain promissory notes against the assignors on the contract of assignment, the statute providing that the assignors should only be liable where the assignee, by due diligence, prosecutes the maker to insolvency; but if suit would be unavailing the assignor is liable (*Wills et al. v. Claffin et al.*, 13 N. B. R. 437; 92 U. S. 185); on the issue of bankruptcy, to admit evidence as to negotiation between the petitioning creditors and the respondents, preceding the consummation of a compromise between them (*In re Jelsh et al.*, 9 N. B. R. 412; *Fed. Cas.* 7257); when a party is charged with absconding, the statements made on his way from his place of residence, concerning his intention to return, to disprove the charge (*United States v. Penn*, 13 N. B. R. 464; *Fed. Cas.* 16025.)

A detached check is admissible in evidence by the bankrupt in proceedings where the discharge of a bankrupt is opposed upon the ground that he had not kept proper books of account; such check having once formed a part of the book, and, together with the stub, shows just how the book was kept. (*In re Brockway*, 7 N. B. R. 595; 6 Ben. 326; *Fed. Cas.* 1917.)

It is inadmissible in proceedings in bankruptcy to introduce evidence of fraud in the creation of a debt (*In re Tallman*, 1 N. B. R. 122; 2 Ben. 348; 1 Amer. Law T. Rep. Bankr. 122; *Fed. Cas.* 18739); or for creditor's counsel to introduce witnesses to prove the nature of the transaction out of which the debt arose, and that it was contracted by fraud (*In re Tallman*, 1 N. B. R. 122; 2 Ben. 348; 1 Amer. Law T. Rep. Bankr. 122; *Fed. Cas.* 18739); to introduce the dying declarations of a fraudulent grantee in a proceeding to set aside a bankrupt's discharge (*In re Marionneaux*, 18 N. B. R. 222; 1 Woods, 37; *Fed. Cas.* 9088); to use the answer to the petition as evidence at a hearing on a petition to expunge proof of a claim (*Canby, Ass. v. McLearn*, 13 N. B. R. 22; *Fed. Cas.* 2378); to introduce the evidence of misrepresentations made to the stockholder, when he subscribed for stock, by an agent of the corporation, in an action by the assignee to collect an assessment made on un-

paid subscriptions. (*Michener v. Payson, Ass.*, 13 N. B. R. 49; 1 N. Y. Wkly. Dig. 272; 2 Wkly. Notes Cas. 339; 8 Chi. Leg. News, 17; 23 Pittsb. Leg. J. 38; Fed. Cas. 9524.)

**The application for an examination.**—An application for an order for an examination of a bankrupt before the register need show no cause therefor nor be verified by an affidavit. (*In re McBrien*, 2 N. B. R. 73; 2 Ben. 513; Fed. Cas. 8665; *In re Lanier*, 2 N. B. R. 59; Fed. Cas. 8070. For *contra*, see *In re Adams*, 2 N. B. R. 33; 2 Ben. 503; 36 How. Pr. 51; Fed. Cas. 39.) A special application to the judge of the bankruptcy court for an order for the examination of the bankrupt by creditors need not be supported by a certificate of the register as to the propriety thereof. (*In re Brandt*, 2 N. B. R. 109; Fed. Cas. 1813.) An order made by the register for the examination, reciting that it is made on the application of a party claiming to be interested in the estate, is in correct form, although the bankrupt objects that the order should have been made only on a verified application in writing, and that it does not purport to be “on the application of a creditor” who has proved his claim. (*In re Vetterlein*, 4 N. B. R. 194; Fed. Cas. 16926.)

**Examination of bankrupt.**—As under this section the bankrupt is a competent witness, it becomes necessary to determine how far he may be called upon to testify. Lord Eldon has tersely said: “It is one of the most sacred principles in the law of this country that no man can be called on to criminate himself, if he choose to object to it; but I have always understood that proposition to admit of a qualification with respect to the jurisdiction in bankruptcy, because a bankrupt cannot refuse to discover his estate and effects, and the particulars relating to them, though in the course of giving information to his creditors or assignees of what his property consists, that information may tend to show he has property which he has not got according to law; as in the case of smuggling and the case of a clergyman carrying on a farm, and the case of persons having the possession of gunpowder in unlicensed places.” (*Cossens, Buck’s Cas.* 531; *Archb. Bank.* 277.) On the same subject, *Erskine, C. J.*, said: “You could not ask a man whether he had not robbed another of a sum of money, because, if he had so robbed, the money would not be the property of the assignees but of the party robbed; it would be, in fact, no discovery of the estate of the bankrupt. But I can see no objection to this question (unless it might be regarded as a chain in evidence to convict the party of robbery), namely, Had you not, on such a day and at such a place, one hundred pounds? and, according to the answer, you might then interrogate what he had done with it.” (*Heath*, 2 Dea. & Ch. 214.) The examination upon an order issued by the register before whom the petition is pending may be had before such register (*In re Lanier*, 2 N. B. R. 59; Fed. Cas. 8070), and any creditor is entitled to an order for examination. The fact that one creditor has examined him is no reason for withholding the privilege from another. (*In re Vogel*, 5 N.



B. R. 393; Fed. Cas. 16984.) He may be examined by a creditor on the day appointed for that purpose, notwithstanding the fact that the creditor failed to appear upon the day originally fixed for the examination. (In re Robinson et al., 2 N. B. R. 163; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 11942.)

Where the examination under a previous order has been abruptly terminated by non-attendance of the assignee's counsel, and an order for a new examination is taken by the assignee, the bankrupt will be required to submit to such examination. (In re Van Tuyl, 2 N. B. R. 25; Fed. Cas. 16881.) Where the application for an order for an examination by the creditor is neither in writing nor under oath, and the bankrupt has previously applied for his discharge, the register, in the exercise of his discretion, may grant the order without requiring a petition or affidavit, duly verified, showing cause of granting same, the time to examine the bankrupt not expiring with the making of his application for discharge. (In re Solis, 4 N. B. R. 18; Fed. Cas. 18165.)

A bankrupt may be examined after service of petition and the orders in the case to ascertain what disposition he has made of his property (In re Bromley & Co., 3 N. B. R. 169); when a petition in bankruptcy is filed prior to an adjudication of bankruptcy (In re Salkey & Gerson, 9 N. B. R. 107; 5 Biss. 486; 6 Chi. Leg. News, 69; 2 Amer. Law Rec. 503; 21 Pittsb. Leg. J. 56; Fed. Cas. 12252); on demand of creditors whose claims have been protested against, if duly proved (In re Belden & Cooker, 4 N. B. R. 57; Fed. Cas. 1241); on the application of a creditor whose debt stands proved and unimpeached, notwithstanding a claim by the bankrupt that any indebtedness from him to said creditor was offset by a counter indebtedness. (In re Kingsley, 7 N. B. R. 558; 6 Ben. 300; Fed. Cas. 7818.)

A bankrupt is not required to submit to an examination after he has been discharged in bankruptcy, unless the discharge be set aside under the provisions of the Bankrupt Act. (In re Jones, 6 N. B. R. 386; Fed. Cas. 7449.) But, *contra*, it has been held that the fact that the bankrupt has received his discharge more than two years before, is not a good objection to his being examined in accordance with the provisions of the Bankrupt Act (In re Heath and Hughes, 7 N. B. R. 448; Fed. Cas. 6304); but he may be examined more than two years after discharge for the purpose of founding and aiding any prosecution to be commenced by the assignee against persons other than the bankrupt (In re Dole, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 3965); but adjournment beyond return day should not be granted except for good cause shown. (In re Mawson, 1 N. B. R. 41; 1 Amer. Law T. Rep. Bankr. 46; Fed. Cas. 9320.) When he is in court he may be examined without further notice (In re Bromley & Co., 3 N. B. R. 169); or upon summons as a witness in respect to the hearing of a motion to expunge proof of a claim (Canby, Ass., v. McLearn, 18 N. B. R. 23; Fed. Cas. 2378); or where it is desired to compel

a bankrupt to discover his estate in proceedings to satisfy a lien established prior to bankruptcy. (Ex parte Taylor, 16 N. B. R. 40; 1 Hughes, 617; 24 Pittsb. Leg. J. 205; Fed. Cas. 13773.)

He may not be examined after discharge, on the register's order touching his acts and business prior to adjudication. (In re Dean, 3 N. B. R. 188; Fed. Cas. 3701; In re Witkowski, 10 N. B. R. 209; Fed. Cas. 17290; In re Dole, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 3963.)

Where, at an adjourned meeting, a creditor resumes the examination, and an attorney for another creditor asks permission to examine, and it is shown that his power of attorney has been revoked, and he then asks leave to examine the bankrupt on behalf of still another creditor, he will be refused. (In re Tift, 17 N. B. R. 550; Fed. Cas. 14030.) A creditor's right to examine the bankrupt is suspended, when opposed on the ground that the resolution of composition had been adopted and confirmed by the requisite number of creditors. (In re Tift, 18 N. B. R. 177; Fed. Cas. 14032.)

He may not be examined as to property acquired or business done after the date of filing of the petition in bankruptcy, provided he states that the same has no connection with or reference to his estate or business prior to said date (In re Rosenfield, 1 N. B. R. 60; 15 Pittsb. Leg. J. 245; 1 Amer. Law T. Rep. Bankr. 47; Fed. Cas. 12059); or when sought for the purpose of gratifying curiosity, or prying into the business of the debtor, or any purpose other than the furtherance of justice and the protection of the rights of creditors (In re Salkey et al., 9 N. B. R. 107; 5 Biss. 486; 6 Chi. Leg. News, 69; 2 Amer. Law Rec. 502; 21 Pittsb. Leg. J. 56; Fed. Cas. 12252); or on the application of creditors opposing a discharge, after previous full examination, unless the first examination were elusive or deficient in material and specified particulars. (In re Frisbie, 13 N. B. R. 349; Fed. Cas. 5131.)

A further examination of the bankrupt before the register, by the creditors opposing the discharge, may be denied by the register. (In re Frizelle, 5 N. B. R. 119; Fed. Cas. 5132; In re Isidor et al., 1 N. B. R. 33; 2 Ben. 123; Fed. Cas. 7105.) But a bankrupt in attendance at a meeting to show cause against his discharge may be required by the register to submit to an examination by a creditor. (In re Brandt, 2 N. B. R. 76; Fed. Cas. 1812.) He may be examined concerning a transaction which may vest in him an equitable interest in property for the purpose of establishing such interest therein in the assignee. (In re Bonesteel, 2 N. B. R. 106; Fed. Cas. 1628.) He must answer all proper questions as to his examination (In re Holt, 3 N. B. R. 58; Fed. Cas. 6646); and he will be compelled to answer a proper question, even though the same question had been answered at his previous examination by another creditor (In re Vogel, 5 N. B. R. 393; Fed. Cas. 16984); or a question asked by the register (In re Holt, 3 N. B. R. 58; Fed. Cas. 6646); he must answer fully as to whatever may concern any parties interested

to know in reference to his debts, business or estate (In re Jay Cooke & Co., 10 N. B. R. 126; Fed. Cas. 3163); also questions relating to his wife's property (In re Craig, 4 N. B. R. 50; Fed. Cas. 3323; In re Clark et al., 4 N. B. R. 70; Fed. Cas. 2805); and questions concerning the acquisition and possession of money after the filing of his petition (In re McBrien, 3 N. B. R. 90; 3 Ben. 481; Fed. Cas. 8666); though he claims that his answers will criminate himself, or tend to prove him guilty of a fraudulent concealment or disposition of his property. (In re Bromley & Co., 3 N. B. R. 169; In re Richards, 4 N. B. R. 25; Fed. Cas. 11769.) Other creditors have no right to intervene and interpose objections to questions put in the course of the examination by one creditor. (In re Stuyvesant Bank, 7 N. B. R. 445; 6 Ben. 38; Fed. Cas. 13532.)

The bankrupt need not answer questions which on their face relate to property that does not belong to him (In re Van Tuyl, 1 N. B. R. 193; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 16980); he is a competent witness as to all matters concerning his estates, and no objection can lie to his testimony save as to its credibility (In re Campbell, Ex parte Campbell et al., 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2348); his declarations are competent evidence concerning the transfer and payment, although not made in the presence of or brought to the knowledge of the creditor preferred, in a suit by an assignee in bankruptcy to recover money and property received by a creditor as a preference (Nudd et al. v. Burrows, Ass., 13 N. B. R. 269; 91 U. S. 426); he is not a competent witness in a criminal proceeding against himself, under section 5132, R. S. (United States v. Black et al., 12 N. B. R. 340; 1 Hask. 570; 1 N. Y. Wkly. Dig. 77; Fed. Cas. 14602); his letters written to third parties admitting the payment of the claim, interposed by attaching creditors in favor of another alleged creditor to defeat adjudication, are admissible in evidence in a contest upon such claim between the attaching and petitioning creditors (In re Hatje, 12 N. B. R. 548; 6 Biss. 436; Fed. Cas. 6215); his admissions before bankruptcy are admissible in support of a set-off pleaded by a defendant in an action by an assignee to foreclose a mortgage given to the bankrupt (Von Sachs, Ass., etc. v. Kretz et al., 19 N. B. R. 83); his statement as to his condition at the time of borrowing money is inadmissible, for it has no bearing upon the question whether the creditor knew or had reasonable cause to believe him insolvent on a subsequent day (Goodrich v. Wilson, 14 N. B. R. 555); whether he shall be allowed to consult his counsel during his examination must be determined by the register according to the circumstances of the case (In re Lord, 3 N. B. R. 58; Fed. Cas. 8502; but see In re Judson, 1 N. B. R. 82; 2 Ben. 210; 35 How. Pr. 15; 1 Amer. L. T. Rep. Bankr. 120; Fed. Cas. 7562); but he should have every proper facility upon examination for refreshing his recollection and making true and careful answer, and may when necessary consult books, papers, and even counsel (In re Tanner, 1 N. B. R. 59; 1 Lowell, 215; 15 Pittsb. Leg. J. 244; 35 How. Pr. 20; 1 Amer. Law

**T. Rep. Bankr. 121; Fed. Cas. 18745); he may be cross-examined by his own counsel (In re Leachman, 1 N. B. R. 91; 1 Amer. Law T. Rep. Bankr. 48; Fed. Cas. 8157); or he may appear as a witness in his own behalf, the examination being confined to the issue made by the pleadings. (In re Witkowski, 10 N. B. R. 209; Fed. Cas. 17920.)**

**Whether an incomplete examination can be used against the bankrupt is not a question arising in the course of his examination, and must be decided by the judge before whom the examination may be offered, if offered in its incomplete condition. (In re Noyes, 11 N. B. R. 511; 2 Lowell, 352; Fed. Cas. 10370.)**

**The bankrupt's examination at a composition meeting must be confined to a true exhibit of his affairs, and, on objection of a creditor, no vote can be taken on a composition until his examination is completed, including the production of his books, if demanded by a creditor; the order of proceedings and the right to vote to be determined by the register (In re Holmes et al., 12 N. B. R. 86; 15 Blatchf. 170; Fed. Cas. 6632); his statement made on examination, admitted by a defendant to be true, may be proved by the testimony of any one who heard it (Goodrich v. Wilson, 14 N. B. R. 555); he cannot have a new trial after being convicted of secreting the money belonging to the estate and fraudulently omitting the same from his schedules, because he was excluded as witness (United States v. Black et al., 12 N. B. R. 340; 1 Hask. 570; 1 N. Y. Weekly Dig. 77; Fed. Cas. 14602); the production of books and papers will be ordered at the summary hearing on the return day of the order to show cause, the fifteenth section of the Judiciary Act of 1789 being applicable to such cases; and, if not, plenary power is given by the general scope of the bankrupt law (In re Mendenhall, 9 N. B. R. 285; Fed. Cas. 9423); he is entitled, upon a motion to dismiss by either party, to have an order for the examination before the register of the party who verified the petition, and either party may bring in affidavits or evidence before the court (In re Scammon, 11 N. B. R. 280; 6 Biss. 195; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 12429); and his possible interest in property, and his right, title and interest to or in property at the time of the filing of his petition in bankruptcy, is a proper subject for examination of a witness. (In re Dole, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 3965.)**

**The testimony of the bankrupt as to the number of his creditors is accepted. (Clinton et al. v. Mayo, 12 N. B. R. 30; Fed. Cas. 2899.)**

**A bankrupt when ordered to appear for examination in reference to his bankruptcy is not entitled to any fees or compensation therefor. (In re McNair, 2 N. B. R. 77; Fed. Cas. 8907; In re O'Kell, 1 N. B. R. 52; 1 Amer. Law T. Rep. Bankr. 32; 3 Pittsb. Leg. J. (U. S.) 232; Fed. Cas. 10174.)**

**The register has not the power by an announcement beforehand to fix the time within which the examination must be concluded. (In re Tift, 17 N. B. R. 421; Fed. Cas. 14036.)**

**Bankrupt's wife.**—A bankrupt's wife may be examined in bankruptcy (In re Campbell, Ex parte Campbell et al., 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2348) in reference to her husband's estate, and upon refusal to attend and answer may be punished for contempt (In re Woolford, 8 N. B. R. 118; 4 Ben. 9; Fed. Cas. 18029); and where the usual order and subpoena to attend before the register has been disregarded, an order to show cause why an attachment should not be issued is a proper proceeding. (In re Bellis et al., 8 N. B. R. 65; 38 How. Pr. 88; 1 Amer. Law T. Rep. Bankr. 178; Fed. Cas. 1276.) She cannot, when examined before a register, decline to answer because the matters inquired of are her private business (In re Craig, 4 N. B. R. 50; Fed. Cas. 3328); but she will be ordered to submit to examination when a *prima facie* case is made out by affidavit that she has or had in her possession property which should have been surrendered to her husband's creditors, or has actively participated in other fraud upon the statute; and when she professes to be a creditor to her husband's estate, if she offers her debt for proof, she can be fully examined in regard to it like any other creditor. (In re Gilbert, 8 N. B. R. 87; 1 Lowell, 340; Fed. Cas. 5410.) She is a competent witness as a creditor, though the wife of a bankrupt (In re Richards, 17 N. B. R. 563; 10 Chi. Leg. News, 275; Fed. Cas. 11770); and is entitled to witness fees for attendance and travel. (In re Griffen, 1 N. B. R. 88; 2 Ben. 209; 1 Amer. Law T. Rep. Bankr. 120; Fed. Cas. 5810.) Her failure to attend for examination upon an order by the register, served on the bankrupt but not on her, prevents his discharge, in the absence of proof that he was unable to procure her attendance (In re Van Tuyl, 2 N. B. R. 177; 3 Ben. 237; 1 Chi. Leg. News, 326; Fed. Cas. 16879); and an agreement that she is to be compensated for a release of her contingent right of dower is not to be implied. (Hiscock, Ass., etc. v. Jaycox & Green, 12 N. B. R. 507; Fed. Cas. 6581.)

**Arrest of bankrupt.**—He may be arrested in another district for contempt in not appearing to answer such process, where an order of examination was not served within the district. (In re Hodges, 11 N. B. R. 369; Fed. Cas. 6562.) The court may imprison him for refusal to answer a proper question concerning the disappearance of assets (In re Salkey and Gerson, 11 N. B. R. 516; 6 Biss. 280; 7 Chi. Leg. News, 195; Fed. Cas. 12354); and he will not be discharged until he has submitted to examination, if he departs from the district after being ordered to submit himself to further examination. (In re Kingsley, 16 N. B. R. 801; Fed. Cas. 7820.)

**Burden of proof.**—The burden of proving the time of dismissal is upon the party who alleges that proceedings in bankruptcy have been dismissed, when an adjudication of bankruptcy has been proved. (Wills et al. v. Claffin et al., 18 N. B. R. 437; 92 U. S. 135.) The burden is upon the respondent to disprove the allegations of the petition under the Bankrupt Act (In re Jelsh et al., 9 N. B. R. 412; Fed. Cas. 7257); yet the

petitioner is compelled to make out his case, and must establish his debt before proceeding to prove bankruptcy. (*Brock v. Hoppock*, 2 N. B. R. 2; Fed. Cas. 1912.)

In the following cases it has been held that the burden of proof is on the creditors, where they file specifications of objections to the discharge of the bankrupt (*In re Okell*, 2 N. B. R. 35; Fed. Cas. 10475); when objecting to the bankrupt's discharge on the ground that he put into his schedule a false or fictitious debt, to show the debt was false and fictitious (*In re Orcutt*, 4 N. B. R. 176; Fed. Cas. 10550); on the petitioner for review to show error in the decision appealed from (*In re Dow*, 6 N. B. R. 10; Fed. Cas. 4036); on the debtor to establish the fraud and the identity of the securities by a fair preponderance of evidence, where the defense is that certain securities belonged to the alleged creditor on account of fraud (*Payne et al. v. Solomon*, 14 N. B. R. 162; Fed. Cas. 10856); on the defendant, that securing a debt out of the ordinary course of business is not fraudulent (*Martin v. Toof et al.*, 4 N. B. R. 158; Fed. Cas. 9164); on the purchaser to sustain the validity of the purchase under a sale, transfer, etc., not made in the usual and ordinary course of business of the debtor (*Wilson v. Stoddard*, 4 N. B. R. 76; 2 Chi. Leg. News, 161; Fed. Cas. 17838; *Walbrun et al. v. Babbitt, Ass.*, 9 N. B. R. 1; 16 Wall. 577); on a trader unable to pay his debts in the ordinary course of business, to show that he is not in fact insolvent. (*In re Miller v. Keys*, 3 N. B. R. 54; Fed. Cas. 9578.)

**Evidence of fraud.**—A charge of fraud in the concealment of a bankrupt's estate from which badges and indices of fraud are deducible must be overborne by positive testimony. (*In re Goodridge*, 2 N. B. R. 105; Fed. Cas. 5547.) The knowledge of a fraud may be established by circumstantial evidence, and to defeat a conveyance for a present consideration the proof must show that the party to whom or for whose benefit it was made knew or had reasonable cause to believe the grantor insolvent and that a fraud upon the bankrupt act was intended. (*Gattman & Co. v. Honea, Ass.*, 12 N. B. R. 493; 7 Chi. Leg. News, 395; Fed. Cas. 5271.) It is *prima facie* evidence of fraud for an insolvent debtor to make a transfer of property outside of the usual course of business (*Webb, Ass., v. Sachs et al.*, 15 N. B. R. 163; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17325); but this presumption may be rebutted by evidence *aliunde* to be produced by the vendee. (*Babbitt v. Walbrun & Co.*, 4 N. B. R. 30; 2 Chi. Leg. News, 285; Fed. Cas. 694.) Conveyances made by bankrupt and alleged to be fraudulent cannot be shown in evidence, unless charged in the specifications in petition to set aside bankrupt's discharge, except so far as that might be used to show the intent of certain acts specified in the petition. (*Tenny et al. v. Collins*, 4 N. B. R. 156; Fed. Cas. 13833.)

**Record evidence.**—Notice by a debtor making payment to bankrupt after adjudication of the demand of the assignee may be proved by an

injunction order and proof of its service. (*Babbitt v. Burgess*, 7 N. B. R. 561; 2 Dill 169; 5 Chi. Leg. News, 326; Fed. Cas. 693.) Notice of insolvency is conclusively shown by a deed taken because the grantor was unable to pay the money which it was given to secure. (*Alderdice, Ass., v. Bank*, 11 N. B. R. 398; 1 Hughes, 47; Fed. Cas. 154.) Knowledge on the part of the mortgagee of the debtor's insolvency is established by proof of a conveyance to secure a pre-existing debt admittedly incurred outside of the ordinary business of the debtor. (*Tuttle v. Truax*, 1 N. B. R. 169; Fed. Cas. 14277.)

**Judgments.**—A judgment record cannot be resorted to to supply omissions in a docket entry, although it may be examined in ascertaining the validity of such entry. (*In re Boyd*, 16 N. B. R. 204; 4 Sawy. 262; 9 Chi. Leg. News, 385; 10 Chi. Leg. News, 1; 4 Law & Eq. Rep. 488; 6 Amer. Law Rec. 311; Fed. Cas. 1746.) Foreign judgments are only *prima facie* evidence of the debt adjudged to be due to the plaintiff, and such a judgment is open to examination; but domestic judgments cannot be collaterally impeached if rendered in a court of competent jurisdiction. (*Michaels et al. v. Post, Ass.*, 12 N. B. R. 152; 21 Wall. 398.)

**Adjudications.**—An adjudication of bankruptcy has every presumption in favor of its validity in a collateral action, where the bankrupt appears after due notice, and makes no objection to the court's jurisdiction (*New Lamp Chimney Co. v. Ansonia Brass and Copper Co.*, 13 N. B. R. 385; 91 U. S. 656); but it may be shown by competent evidence to be void in an action by an assignee to recover real estate, claiming title by virtue of the bankruptcy proceedings, where the defendant sets forth a purchase from the bankrupt, and denies the bankruptcy and impeaches the adjudication. (*Stuart v. Aumuller*, 8 N. B. R. 541.) An adjudication *in favitum* is not conclusive evidence as against an execution creditor as to the allegations in the petition for adjudication, found to be true by such decree. (*In re Dunkle et al.*, 7 N. B. R. 72; Fed. Cas. 4160.)

**Evidence of partnership.**—To prove partnership, where the existence of an alleged partnership is the subject of inquiry, the declarations of the alleged partner are not competent evidence (*Nudd et al. v. Burrows, Ass.*, 13 N. B. R. 289; 91 U. S. 426); but oral evidence is admissible to prove that the lands are partnership property. (*In re Farmer et al.*, 13 N. B. R. 207; 10 Chi. Leg. News, 395; Fed. Cas. 4650.)

**Evidence of a preference.**—A preference is conclusively shown by the transfer by an insolvent debtor of a large portion of his property to one creditor, with no provision for an equal distribution of its proceeds to all his creditors. (*Toof v. Martin*, 6 N. B. R. 49; 18 Wall. 40.) A preference is strongly presumed from evidence that the debtor signed and delivered to the defendants a judgment note, payable one day after date, giving them the right to enter the same of record and issue execution thereon without delay for a debt which was not then due. (*First Nat. Bank of Clarion v. Jones, Ass.*, 11 N. B. R. 381; 21 Wall. 325.)

The intent to prefer may be inferred from the fact of preference. (*Rison v. Knapp*, 4 N. B. R. 144; 1 Dill. 186; Fed. Cas. 11861.) A preference can be disproved where creditor has secured judgments by default against debtor, whom it knew was insolvent and liable to be proceeded against under the Bankrupt Act, and such judgments can only be sustained, if at all, upon very close and satisfactory proofs to repel the legal presumption of actual or legal intent to give and to obtain a preference in fraud of the provisions, policy and purpose of the Bankrupt Act. (*Warren v. D., L. & W. Ry. Co.*, 7 N. B. R. 451; 5 Chi. Leg. News, 205; 4 Leg. Op. 533; Fed. Cas. 17194.) A preference will be presumed where an insolvent debtor confesses judgment, which is followed by execution and seizure. (*Webbs, Ass., v. Sachs et al.*, 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17325.) Whether a judgment against an insolvent was obtained with a view to give a preference, the intention of the bankrupt is the turning point, and all the circumstances which go to show such intent should be considered. (*Little, Ass., v. Alexander*, 12 N. B. R. 131; 21 Wall. 500.) A preference gained by a bankrupt facilitating the taking of his property on execution by any affirmative action, where the bankrupt and the creditor co-operated in adopting the form of an apparently hostile legal proceeding, may be proved by circumstantial evidence. (*In re Baker*, 14 N. B. R. 433; 14 Alb. Law J. 294; Fed. Cas. 763.)

**Confidential communications.**—A bankrupt's communications to his attorney are privileged and cannot be brought out in interrogatories to bankrupt (*In re Aspinwall*, 10 N. B. R. 448; 31 Leg. Int. 365; 23 Pittsb. Leg. J. 75; Fed. Cas. 591); but an attorney-at-law cannot decline to testify concerning his own acts done in behalf of his client (*In re O'Donohoe*, 3 N. B. R. 59; Fed. Cas. 10135); nor refuse to be sworn on the ground that he had acted as counsel for the bankrupt and is still his legal adviser (*In re Woodward et al.*, 3 N. B. R. 477; 4 Ben. 102; Fed. Cas. 17999); and will be compelled to answer questions concerning a conveyance to him by the bankrupt of land and a subsequent conveyance by the former of the same land to the wife of the latter (*In re Bellis et al.*, 3 N. B. R. 49; 3 Ben. 386; 38 How. Pr. 79; 3 Amer. Law T. 170; Fed. Cas. 1274); and acts and things which have come to a witness' knowledge by reason of his position as counsel of bankrupt may be inquired about, and the witness be required to state all the information he has in regard to them, which was not communicated to him by the bankrupt, or by some one through the bankrupt's direction. (*In re Aspinwall*, 10 N. B. R. 448; 31 Leg. Int. 365; 23 Pittsb. Leg. J. 75; Fed. Cas. 591.)

**Witnesses in general.**—A witness shown to have knowledge of the location, situation and condition of the bankrupt's property, and the fraudulent disposal thereof, may be compelled to testify thereto, notwithstanding issue be not joined nor any fact be in dispute (*In re Blake*, 2 N. B. R. 2; Fed. Cas. 1492); he is not compelled to testify for his surety on a note in a



suit by an administrator against him as principal and his surety. (*Jenks v. Opp*, 12 N. B. R. 19.) A witness having purchased claims against a bankrupt's estate, being examined as to where he obtained the money paid therefor, and having answered that it did not come from the bankrupt, is bound, on pain of contempt, to state where he did obtain it. (*In re Lathrop et al.*, 4 N. B. R., 98; *Fed. Cas.* 8106.) He must answer all proper questions relating to his trade and dealings with a bankrupt prior to commencement of proceedings; and if, to answer properly, fully and truthfully any such question it is necessary that the witness should produce a copy of any transaction of his with the bankrupt, such copy must be produced. (*In re Earle*, 3 N. B. R. 81; *Fed. Cas.* 4244.) He cannot refuse to testify before the register concerning his dealings with the bankrupt on the ground that his answers may furnish evidence against him in a civil action brought or to be brought on behalf of the assignee. (*In re Fay*, 8 N. B. R. 163; *Fed. Cas.* 4708.) It has been held that a witness may be compelled by the circuit court in another state to testify, or be punished for a refusal to testify, when a commission is issued by the bankrupt court and sent to such other state. (*In re Johnston*, 14 N. B. R. 569; *Fed. Cas.* 7423.) A witness is not compelled to answer, on cross-examination, a question which does not relate to any matter of fact in issue, or to any matter contained in his direct testimony, a truthful answer to which would tend to degrade him. (*In re Lewis*, 3 N. B. R. 153; 4 Ben. 67; 39 How. Pr. 155; *Fed. Cas.* 8312.)

A witness regularly summoned, on application of the assignee, in bankruptcy proceedings, submitting himself to examination after making objections, waives his objections, and he cannot refuse to be examined on the ground that the bankrupt has not been examined, and that there was no question in controversy to be settled by testimony. (*In re Fredenburg*, 1 N. B. R. 84; 2 Ben. 133; *Fed. Cas.* 5075.) He is not rendered incompetent by reason of the fact that an assignee has filed a petition against him with others in the proceeding in relation to the property of the bankrupt, and an injunction awarded thereon. (*In re Feinberg*, 2 N. B. R. 187; 3 Ben. 163; *Fed. Cas.* 4716.) It has been held that a witness summoned before a register for examination is not entitled to appear by counsel (*In re Comstock & Co.*, 18 N. B. R. 198; 3 Sawy. 517; 8 Chi. Leg. News, 82; *Fed. Cas.* 8080), unless he is made a party to a new collateral proceeding by being cited to answer for contempt. (*In re Feinberg et al.*, 2 N. B. R. 187; 3 Ben. 163; *Fed. Cas.* 4716.)

**Assignee as witness.**—An assignee may be subpoenaed and required to testify in the same manner as any other witness, and the register has authority to make the requisite order; but he is not subject as of course to an examination by any creditor whenever the latter may desire it, but will be protected from unnecessary annoyance, by the refusal of an application for his examination, unless upon some issue regularly referred to the register. (*In re Smith*, 14 N. B. R. 462; *Fed. Cas.* 12988.)

b. The right to take depositions in proceedings under this act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

The law governing the taking of testimony is found in U. S. Rev. Stat., secs. 858-879, and the persons before whom the same may be taken are set forth in sec. 1778 and the act of August 15, 1876 (1 Supp. Rev. Stat. 123). The act of March 9, 1893 (2 Supp. Rev. Stat. 4), also authorizes the taking of depositions of witnesses in cases pending at law or in equity in the district or circuit courts of the United States, in the mode prescribed by the laws of the state in which the courts are held.

A deposition, taken by the defendant before a register having power to administer oaths, no objection being made, and the witness being examined and cross-examined, was properly taken (Lawrence, Ass., v. Graves, 5 N. B. R. 279; Fed. Cas. 8133); if taken after the filing of the petition, is valid, although proceedings may not be pending before him. (In re Deane, 2 N. B. R. 29; 15 Pittsb. Leg. J. 581, 583; Fed. Cas. 3700.) In a deposition in proof of debts, where a commissioner failed to sign the jurat, the omission may be supplied if he recollects the fact of the creditor signing and verifying in his presence, otherwise the party may be sworn and the deposition filed *nunc pro tunc*. (In re McKibben, 12 N. B. R. 97; Fed. Cas. 8859.)

When depositions are not taken *ex parte* or *de bene esse* under the act of 1789, or both parties appear and examine and cross-examine, the depositions being subsequently placed on file, the party at whose instance they were taken cannot object to their being read by the opposite party, on the ground of irregularity or informality. (Lawrence, Ass., v. Graves, 5 N. B. R. 279; Fed. Cas. 8133.) A deposition which has been altered to correct an error must be resworn to before it can be filed, and a deponent cannot confer upon another the power to alter a sworn paper. (In re Walther v. Walther, 14 N. B. R. 273; Fed. Cas. 17126.) The deposition of acts of bankruptcy must be such as constitutes legal testimony in order to authorize the making of an order to show cause (In re Rosenfelds, 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 533; Fed. Cas. 12061); if the depositions or affidavits to the petition as to indebtedness and acts of bankruptcy are not sufficient, the court may allow supplemental affidavits or proofs to be filed. (In re Hanibel et al., 15 N. B. R. 233; 9 Chi. Leg. News, 165; 15 Ill. Law J. 271; 24 Pittsb. Leg. J. 152; Fed. Cas. 6023.) A deposition to an act of bankruptcy consisting of a fraudulent conveyance must allege or show the fraudulent intent of the debtor in making the conveyance. (Cunningham v. Cady, 13 N. B. R. 525; 8 Chi. Leg. News, 165; 4 Amer. Law Rec. 510; Fed. Cas. 3480.) Original

papers which have been exhibited to the court and annexed to depositions, and become marked and referred to therein as exhibits, become a part of the depositions, and cannot be withdrawn and a copy substituted therefor, except upon the application of a party who can show a proper use therefor. (In re McNair, 2 N. B. R. 109; Fed. Cas. 8908.)

c. Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

Section 58, c, requiring all notices to be given by the referee unless otherwise ordered by the judge, does not seem to comprehend notices for the taking of depositions, but such notices should be given by the attorney.

d. Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

[Act of 1867. Sec. 14. . . . and a copy, duly certified by the clerk of the court, under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as hereinbefore mentioned;

Sec. 38. . . . Copies of such records, duly certified under the seal of the court, shall in all cases be *prima facie* evidence of the facts therein stated.]

A record cannot be impeached without previous notice by proper form of pleading. (Sloan v. Lewis, 12 N. B. R. 173; 23 Wall. 150.) The register is an officer of the court and will take judicial notice of its judgments and decrees (In re Scott et al., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519); and to prove what proceedings have taken place before him, the entries of a register may be used as evidence; but as to the number of days that a witness was in attendance before a register, the certificate of the clerk is *prima facie* evidence (In re Crane & Co., 15 N. B. R. 120; 1 Tex. Law J. 41; Fed. Cas. 8352); the certified copy of the examination of a debtor in another state comes within the statutory "judicial proceedings" (In re Rooney, 6 N. B. R. 163; Fed. Cas. 12032); a copy of the

record is admissible although it does not purport to be a copy of the entire record (*Michener v. Payson, Ass.*, 18 N. B. R. 49; 1 N. Y. Wkly. Dig. 272; 2 Wkly. Notes Cas. 339; 8 Chi. Leg. News, 17; 28 Pittsb. Leg. J. 38; Fed. Cas. 9524); and if certified by the clerk under the seal of the court is *prima facie* evidence of the facts therein contained, without the certificate of the judge that the attestation is in due form. (*Turnbull v. Payson, Ass.*, 16 N. B. R. 440; 95 U. S. 418.)

*e.* A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

An assignee's representative character need not be averred in the pleadings, and it is not necessary to prove all the steps in the proceedings if a duly certified copy of the assignment be put in evidence. (*Dambmann v. White et al.*, 12 N. B. R. 438.) The court is bound to take judicial notice that all the bankrupt's property and effects were vested, by operation of law, in the assignee, after it is shown that the defendant has been declared a bankrupt. (*Morris v. Davidson*, 11 N. B. R. 454.) An assignment to assignee, no one opposing, must be recorded when presented (*In re Neale*, 3 N. B. R. 43; 1 Amer. Law T. Rep. Bankr. 295; Fed. Cas. 10066); but a record of the assignment is not necessary to give force or validity to the transfer to the assignee (*Davis v. Anderson*, 6 N. B. R. 146; Fed. Cas. 3623); and under a general averment that the plaintiff was possessed as of his own property, proof may be given that he acquired the title by means of proceedings in bankruptcy. (*Dambmann v. White et al.*, 12 N. B. R. 438.)

*f.* A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

[Act of 1867. SEC. 34. . . . A discharge duly granted . . . may be pleaded . . . as a full and complete bar to all suits brought on any such debts, claims, liabilities or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and [the] regularity of such discharge.]

If jurisdiction is shown by the record, an adjudication cannot be assailed in a collateral action (*Sloan v. Lewis*, 12 N. B. R. 173; 22 Wall. 150); but, no jurisdiction of the subject-matter or parties existing in the court which rendered judgment, it is null and void and may be impeached in collateral proceedings, and the record of the court showing such jurisdiction may be contradicted by parol evidence. (*In re McKibben*, 12 N. B. R. 97; Fed. Cas. 8859.)

A certificate of discharge in bankruptcy, signed by the judge, attested by the clerk under the seal of the court, is not only sufficiently authenticated, but it is precisely the means by which the bankrupt is to prove and have the benefit of his discharge. (*Miller v. Chandler*, 17 N. B. R. 251.) The discharge of the bankrupt is conclusive of the regularity of the proceedings, and can only be attacked in the court granting it, upon proper proceedings (*In re Witkowiak*, 10 N. B. R. 209; Fed. Cas. 17920); and a certificate of discharge is conclusive evidence in favor of the bankrupt of the fact and regularity of the discharge, but it is not conclusive evidence in favor of other parties seeking to use it. (*Dewey v. Moyer*, 18 N. B. R. 114.)

*g.* A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

The trustee of the estate of a bankrupt, upon his appointment and qualification, is by operation of law vested with the title of the bankrupt as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt. (Sec. 70.)

**Sec. 22. Reference of cases after adjudication.**—*a.* After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district

Under this section the trustee is required to proceed with the administration by collecting and reducing to money the property of the estate

under the direction of the court, and close it up as expeditiously as compatible with the best interests of the parties in interest (sec. 47), or the case may be referred to the referee for this action. The convenience of the parties in interest may be consulted and the case referred to any referee in the judicial district of the court, although there may be another referee in the bankruptcy district in which the petition was filed, and for cause, or at the instance of parties, may change the reference from one referee to another. (Sec. 22, b.) The jurisdiction and duties of a referee are found in sections 38 and 39. The record and findings of the referee may be modified, overruled or returned by the court with instructions for further proceedings by the referee. (Sec. 2—10.)

b. The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

In case of the transfer from one referee to another, the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees. (Sec. 40, b.)

The court ordered a case removed from a register because it was shown that he had attempted to influence the choice of an assignee. (In re Smith, 1 N. B. R. 25; 2 Ben. 113; Fed. Cas. 12971.)

### Sec. 23. Jurisdiction of United States and state courts.

a. The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants. 1781 U.S. 524  
111 Fed 892

[Act of 1867. SEC. 2. . . . That the several circuit courts of the United States, within and for the districts where the proceedings in bankruptcy shall be pending, shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case in a court of equity. . . . Said circuit courts shall also have concurrent jurisdiction with the district courts of the same district of all suits at law or in equity

which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee; but no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued, for or against such assignee.]

For provisions with reference to proceedings in law and equity, see Orders 87. The jurisdiction of circuit courts of the United States is set forth in U. S. Rev. Stat., §§ 629-657, as amended by the act of August 18, 1888 (1 Supp. U. S. Rev. Stat. 611), and the acts specified in note 1 thereto.

b. Suits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

c. The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act.

Courts of bankruptcy are invested, within their territorial limits, with jurisdiction to arraign, try and punish bankrupts, officers and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may hereafter be enacted, regulating trials for the alleged violation of laws of the United States. (Sec. 2-4.) The offenses for which a penalty is attached and punishment to be inflicted are set forth under section 29.

Jurisdiction of circuit courts.—The United States circuit court has jurisdiction of an action brought by an assignee to recover a debt due the bankrupt's estate in a state other than that in which proceedings in bankruptcy are pending (*Payson v. Dietz*, 8 N. B. R. 193; 5 Chi. Leg. News, 494; 80 Leg. Int. 313; Fed. Cas. 10861; *Burbank v. Bigelow et al.*, Ass., 14 N. B. R. 445; 92 U. S. 179); of a proceeding by the assignee to procure the delivery to him of property which the bankrupt had offered to be taken by legal process with intent to give preference (*In re Ballou*,

3 N. B. R. 177; 4 Ben. 135; Fed. Cas. 818); or a bill filed by the United States to obtain payment out of a trust fund, held by a trustee, appointed in proceedings in bankruptcy. (Lewis, Trustee, v. United States, 14 N. B. R. 64; 92 U. S. 618.) It will entertain a bill by an assignee in bankruptcy against several mortgagees and other lienholders to ascertain the amount due, and sell all the property free from incumbrances. (Sutherland et al. v. L. S. S. C. R. & L. Co., 9 N. B. R. 298; 1 Cent. Law J. 127; Fed. Cas. 13643.) United States circuit courts have no jurisdiction of a case at law or in equity in which the state is plaintiff against its citizens, it not being conferred by the constitution or by an act of congress. (State of North Carolina v. Trustees of University et al., 5 N. B. R. 466; 1 Hughes, 133; Fed. Cas. 10318.)

**Suits in other districts.**—An assignee in bankruptcy can bring a suit in a United States district court, other than that in which bankruptcy proceedings are pending, to recover back money alleged to have been paid in violation of the Bankrupt Act. (Shearman v. Bingham et al., 7 N. B. R. 490; Goodall v. Tuttle, 7 N. B. R. 193; 3 Biss. 219; 5 Amer. Law T. Rep. (U. S. Ct.) 240; 7 West. Jur. 32; 4 Chi. Leg. News, 473; Fed. Cas. 5533. But see Jobbins v. Montague, 6 N. B. R. 509; Fed. Cas. 7330.)

**Personal conduct of federal judges.**—In the discharge of their functions, the personal conduct and administration of the federal judges need not conform to the practice in the state courts. (Nudd et al. v. Burrows, Ass., 13 N. B. R. 289; 91 U. S. 426.)

**When federal courts will enjoin proceedings in state courts.**—Courts of bankruptcy will only interfere by summary order to avoid a conflict of jurisdiction between the officers of state courts and those of the court of bankruptcy when such conflict clearly appears to exist. (In re Davidson, 2 N. B. R. 49; 2 Ben. 506; Fed. Cas. 3598.) Their jurisdiction extends to the enjoining of state court bankruptcy proceedings, though the latter were commenced prior to the filing of the petition in the bankrupt court. (In re Citizens' Savings Bank, 9 N. B. R. 152; Fed. Cas. 2735.) They will not interpose by injunction to restrain proceedings against a bankrupt in a state court unless bankruptcy proceedings are pending therein (In re Richardson, 2 N. B. R. 74; 2 Ben. 517; 2 Amer. Law T. Rep. Bankr. 20; Fed. Cas. 11774); but as soon as such proceedings are commenced, it acquires sole jurisdiction and may enjoin further proceedings in other courts. (Penny v. Taylor, 10 N. B. R. 200; Fed. Cas. 10957; Samson v. Burton, 4 N. B. R. 1; Fed. Cas. 12285; In re Fuller, 4 N. B. R. 29; 2 Chi. Leg. News, 575; Fed. Cas. 5148; In re Vogel, 2 N. B. R. 138; 1 Chi. Leg. News, 210; Fed. Cas. 16983; Zahm v. Fry et al., 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155; Fed. Cas. 18198; In re Ulrich et al., 8 N. B. R. 15; Fed. Cas. 14328; In re Wallace, 2 N. B. R. 52; Deady, 433; 3 Amer. Law Rev. 174; 1 Chi. Leg. News, 30; Fed. Cas. 17094; Keenan v. Shannon et al., 9 N. B. R. 441; 10 Phila. 219; 31 Leg. Int. 85; Fed. Cas. 7610; In re Bloss, 4 N. B. R. 37; Fed. Cas. 1563; In re Sady Bryan Mining Co., 6 N. B. R. 252; Fed. Cas. 7980.) It will



restrain defendants to whom a bankrupt had fraudulently assigned his property from interfering with the assigned property or the proceeds thereof (*Sedgwick v. Menck et al.*, 1 N. B. R. 108; *Fed. Cas.* 12167; *In re Holland, Jr.*, 12 N. B. R. 408; 1 N. Y. Wkly. Dig. 126; *Fed. Cas.* 6605); and will restrain a litigant in a state court from doing that which would frustrate or directly impede the jurisdiction conferred by the act. (*Irving v. Hughes*, 2 N. B. R. 20; 7 *Amer. Law Reg.* (N. S.) 209; 6 *Phila.* 451; 24 *Leg. Int.* 860; 15 *Pittsb. Leg. J.* 121; *Fed. Cas.* 7076.)

The circuit court has power to grant an injunction to restrain an action of trover against a marshal for taking possession, under a warrant in bankruptcy, of certain goods claimed by the party bringing the action (*Hudson, Ass. v. Schwab et al.*, 18 N. B. R. 490; 26 *Pittsb. Leg. J.* 140; *Fed. Cas.* 6885); but a circuit court of one district, in a suit by an assignee appointed by a district court in another state, cannot enjoin a suit to foreclose a mortgage in the state court of a third state. (*Markson et al. v. Heaney*, 4 N. B. R. 165; 8 *Chi. Leg. News*, 153; *Fed. Cas.* 9098.)

**When federal court will not interfere.**—The bankrupt court will not interfere with the possession of receivers appointed by a state court in an action brought by one partner against the other for a settlement and winding up of the partnership, where the firm was subsequently adjudged bankrupt and an assignee appointed, who made application for an order directing the marshal to take possession of the joint property in the hands of the receivers. (*In re Clark et al.*, 3 N. B. R. 180; 4 *Ben.* 88; *Fed. Cas.* 2798.)

**How injunction applied for.**—Injunctions in bankruptcy, at least when issued in the primary steps of the proceedings, may be allowed and issued without notice. (*In re Muller et al.*, 8 N. B. R. 86; *Deady*, 518; 2 *Amer. Law T. Rep. Bankr.* 83; *Fed. Cas.* 9912.) When issued on a creditor's petition, it should conform to the language of the statute. (*In re Keiler et al.*, 18 N. B. R. 10; 7 *Chi. Leg. News*, 42; 9 *West. Jur.* 175; *Fed. Cas.* 7647.)

It is unnecessary to dissolve an injunction against suits in state courts conditioned and limited to the bankrupt's discharge. (*In re Thomas*, 8 N. B. R. 7; *Fed. Cas.* 18890.) It will not be granted where the grounds are alleged in the petition on information and belief merely, and the petition is not accompanied by affidavits sustaining the allegations. (*In re Bloss*, 4 N. B. R. 37; *Fed. Cas.* 1562.)

**Injunction not granted in matters of composition.**—It cannot suspend or deny the right of a creditor to receive a composition unless, in an action against the creditors, a specific lien upon the fund is claimed or a receiver has been appointed who has succeeded to the creditor's title. (*In re Kohlsaat et al.*, 18 N. B. R. 570; *Fed. Cas.* 7918.) It will not restrain a creditor who objects to a composition from suing the debtor to recover a provable debt, unless the debtor surrenders himself to the court and abides by its adjudication. (*In re Tiff*, 18 N. B. R. 78; *Fed.*

Cas. 14081.) And, if a composition be entered into for cash payment, secured by a mortgage on realty, the district court has no jurisdiction to restrain a creditor from levying an execution on personal property, although the name of such creditor was properly placed on the list of creditors. (In re Lytle & Co., 14 N. B. R. 457; 11 Phila. 522; 8 N. Y. Wkly. Dig. 303; 5 Amer. Law Rec. 306; 9 Chi. Leg. News, 18; 33 Leg. Int. 349; 1 Cin. Law Bul. 246; 24 Pittsb. Leg. J. 14; Fed. Cas. 8650.)

**Injunction by state court.**—A state court will not grant an injunction restraining a party from applying for the benefit of the Bankrupt Act of the United States (Fillingin v. Thornton, 12 N. B. R. 92); nor will it enjoin the assignee from collecting a note made payable to the bankrupt. (Southern et al. v. Fisher, Trustee, 16 N. B. R. 414.)

**Discharge from arrest.**—The bankrupt court has no power to discharge from custody a bankrupt held under arrest in an action of tort in the nature of deceit in obtaining possession of plaintiff's goods by means of false and fraudulent representations. (In re Devoe, 2 N. B. R. 11; 1 Lowell, 251; 7 Amer. Law Reg. (N. S.) 790; 1 Amer. Law T. Rep. Bankr. 20; Fed. Cas. 3843.)

**Jurisdiction in law and equity.**—Under the Bankrupt Act, district courts have jurisdiction both in law and equity (In re Fendley, 10 N. B. R. 250; 3 Amer. Law Rec. 105; Fed. Cas. 4728; Smith v. Mason, 6 N. B. R. 1; In re Marter, 12 N. B. R. 185; Fed. Cas. 9143; In re Bonesteel, 3 N. B. R. 127; 7 Blatchf. 175; Fed. Cas. 1627); and suit therein may be brought by the assignee in bankruptcy against any person claiming an adverse interest, or by such person against such assignee, touching any property of the bankrupt transferable to or vested in such assignee. (Shearman v. Bingham et al., 7 N. B. R. 490; Harmanson, Ass., v. Bain et al., 15 N. B. R. 173; 1 Hughes, 188; Fed. Cas. 6072; Smith v. Mason, 6 N. B. R. 1; 14 Wall. 419; In re Krogman, 5 N. B. R. 116; Fed. Cas. 7936.)

A suit in equity cannot be maintained for the sole reason that the plaintiff (assignee) cannot give the bond required in an action at law. (In re Oregon Iron Works, 17 N. B. R. 404; 4 Sawy. 169; 26 Pittsb. Leg. J. 8; Fed. Cas. 10562.) Where there has been no consummated conversion by the bankrupt of his wife's separate estate, the court will decree according to the equity of the case, and the same rule applies where the conversion has been consummated by fraud. (In re Campbell, 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2318.)

**Limit to jurisdiction of bankrupt court.**—The jurisdiction of the bankrupt court ceases with the granting of a discharge, and the plaintiff may then apply to the state court for relief. (Penny v. Taylor, 10 N. B. R. 200; Fed. Cas. 10937.)

**How assignee may proceed.**—An assignee is not restricted to an action at law or suit in equity for the recovery of property fraudulently transferred by the bankrupt, but may resort to summary proceedings upon petition to the court in which bankruptcy proceedings are pending. (Bill, Ass., v. Beckwith et al., 2 N. B. R. 82; 1 Chi. Leg. News, 103;

Fed. Cas. 1406.) He may proceed by summary motion or petition, and need not resort to plenary suit to enforce payment against sureties on delivery bond in case of fraudulent sale. (*Stores et al. v. Engel et al., Ex parte Garnett, Ass.*, 19 N. B. R. 90; Fed. Cas. 18494.)

**When state courts have jurisdiction.**—A state court has jurisdiction of an action brought by an assignee in bankruptcy to foreclose a mortgage (*Burlingame, Ass. eto. v. Parce et al.*, 17 N. B. R. 246); or to set aside a mortgage executed by a bankrupt, in fraud of the Bankrupt Act (*Isett v. Stuart*, 16 N. B. R. 191; *Gilbert v. Priest*, 8 N. B. R. 159. But see *Voorhees v. Frisbie*, 8 N. B. R. 152); or an action by an assignee to collect a debt due to the estate (*Russell, Ass. eto. v. Owen*, 15 N. B. R. 322); and to recover money paid to a creditor as a preference (*Claffin v. Houseman*, 15 N. B. R. 49; 93 U. S. 130; *Kemmerer v. Tool*, 12 N. B. R. 334; *Jordan, Ass. v. Downey*, 12 N. B. R. 427; *Goodrich v. Wilson*, 14 N. B. R. 555); also by an assignee to recover property disposed of by the bankrupt in fraud of the Bankrupt Act, and the United States courts have not exclusive jurisdiction of such action. (*Peiper v. Harmer*, 5 N. B. R. 252; 28 Leg. Int. 148; *State v. Dewey*, 5 N. B. R. 466; *In re Cent. Nat. Bank*, 6 N. B. R. 207; Fed. Cas. 2547; *Gilbert v. Priest*, 8 N. B. R. 159; and *Dambmann v. White*, 12 N. B. R. 433. *Contra*, *Bingham v. Claffin*, 7 N. B. R. 412; *Voorhees v. Frisbie*, 8 N. B. R. 152; *Bromley v. Goodrich*, 15 N. B. R. 239; *Hotchkiss v. —*, 14 N. B. R. 445; *Cook v. Walter et al.*, 9 N. B. R. 155.)

It has jurisdiction of pending suits where there is nothing in them which requires the equitable interference of the district court to prevent any mischief or wrong to other creditors in bankruptcy, or any waste or misapplication of the assets, especially where there is no suggestion of fraud or injustice on the part of the plaintiffs (*In re Davis*, 8 N. B. R. 167; Fed. Cas. 3619); also in an action in law or in equity brought by an assignee, where the equity sought is such as is recognized by the laws of the state in which the action is brought, and not the mere creature of the Bankrupt Act (*Voorhees v. Frisbie*, 8 N. B. R. 152); also over all subjects arising out of the question whether the debt in litigation is, or not, embraced in the class or classes of liabilities from which the debtor is absolved, and upon which his discharge has no effect (*Stevens v. Brown*, 11 N. B. R. 568); and of an action to obtain possession of property which, at the time bankruptcy proceedings are instituted, is in the hands of the sheriff, under attachments issued out of the state courts (*Johnson v. Bishop*, 8 N. B. R. 533; 21 Pittsb. Leg. J. 77; Fed. Cas. 7373); of a suit brought on a note. (*In re Mannheim*, 7 N. B. R. 342; 6 Ben. 270; Fed. Cas. 9038.) A state court may enforce the lien of an attachment or the lien of a creditor upon property conveyed in fraud of creditors, or the lien of a partner upon partnership funds, and, having obtained lawful jurisdiction over the parties and subject-matter, they have the right to determine all questions as they arise, according to law, subject to the

final judgment of the United States Supreme Court, in case any right or claim is set up under any statute of the United States, and such right or claim is denied to them. (*Mason et al. v. Warthen*, 14 N. B. R. 346.)

The jurisdiction of a state court to foreclose a mortgage is not divested by proceedings in bankruptcy, where leave is granted by the bankrupt court, the assignee consenting, and the bankrupt mortgagor and his wife alone objecting (*McHenry et al. v. La Societe Francaise*, 16 N. B. R. 385; 95 U. S. 581); but where a bankrupt court orders a sale of mortgaged property, a state court has no jurisdiction to foreclose the mortgage. (*In re Devore*, 16 N. B. R. 56; 24 Pittsb. Leg. J. 185; Fed. Cas. 3847.) A mortgagee may proceed to foreclose his mortgage in a state court if the assignee does not seek to redeem the mortgaged property, and the proceeding to foreclose is not absolutely void. (*Brown v. Gibbons*, 13 N. B. R. 407; *Reed v. Bullington*, 11 N. B. R. 408.) A claimant of property taken from him by the marshal by virtue of a provisional warrant in bankruptcy proceedings commanding him to seize the property and effects of the bankrupt cannot be restrained from prosecuting an action in a state court against the marshal for the value and damages for the detention thereof. (*In re Marks*, 2 N. B. R. 175; 16 Pittsb. Leg. J. 12; 1 Chi. Leg. News, 245; Fed. Cas. 9095.) An attachment upon mesne process is a lien, and such a lien as can be enforced in a state court, notwithstanding bankruptcy proceedings, by a qualified judgment, limited in its operation to the property attached, and not to be enforced against the other property, or the person of the bankrupt. (*Stoddard v. Locke et al.*, 9 N. B. R. 73.) Proving a debt and recovering dividends in bankruptcy against a corporation is no bar to recovering judgment for the balance in a state court. (*Ansonia Brass and Copper Co. v. New Lamp Chimney Co.*, 10 N. B. R. 355.) The fact that bankruptcy proceedings have been begun in the federal court against a bankrupt does not give said court exclusive jurisdiction over actions against the marshal for trespass in seizing the property of a stranger as being that of a bankrupt (*Marsh et al. v. Armstrong*, 11 N. B. R. 125); of an action against an assignee for the tortious taking of property not in possession of the bankrupt and belonging to a stranger. (*Leighton v. Harwood*, 12 N. B. R. 360.) The adoption of a bankrupt law does not divest the state courts of jurisdiction over insolvent proceedings pending at the time of its adoption. (*Lavender v. Gosnell & Tripolett*, 12 N. B. R. 282.)

**Jurisdiction by state court does not bar bankrupt court.**—Although state courts have jurisdiction under their statutes to settle and arrange the affairs and distribute the assets of an insolvent corporation, their jurisdiction is at an end the moment the corporation is adjudicated a bankrupt by the United States court, the jurisdiction of the latter in bankruptcy being an exclusive jurisdiction. (*Watson v. Bank*, 11 N. B. R. 161; 2 Hughes, 300; Fed. Cas. 17279.) After proceedings have been commenced in a state court by one of the members of a copartnership, to

put an end thereto, and for an account, and the property is in the hands of a receiver, it is competent for another member of the firm to file a petition in bankruptcy to have himself and the firm adjudged bankrupt. (In re Noonan, 10 N. B. R. 330; 5 Chi. Leg. News, 557; 80 Leg. Int. 425; 21 Pittsb. Leg. J. 73; Fed. Cas. 10292.)

**Receiver appointed prior to bankruptcy proceedings.**—Where proceedings were had under a state law having all the elements of a bankruptcy law, prior to the filing of a petition in bankruptcy, the mere acquisition of jurisdiction over the debtor, and appointment of a receiver who is in possession, is not sufficient ground for dismissing the petition (In re Green Pond R. R. Co., 13 N. B. R. 118; Fed. Cas. 5786); and an action in behalf of an assignee in bankruptcy, to compel a receiver appointed in the state court, in a creditor's suit, before the proceedings in bankruptcy, to deliver up the property to the assignee. (Myer et al. v. Crystal Lake Pickling and Preserving Works, 14 N. B. R. 2.) It has been held the United States district court in bankruptcy will not interfere with possession of receivers appointed by state court. (Alden v. Railroad Co., 5 N. B. R. 230; Fed. Cas. 152.) After the filing of a petition in involuntary bankruptcy no person can acquire any interest by a receivership created by a state court, or otherwise, in the property of the debtor, which the decree in bankruptcy will not displace or override. (Smith v. Buchanan et al., 4 N. B. R. 133; 3 Alb. Law J. 97; Fed. Cas. 13016.)

**When state courts have no jurisdiction.**—State courts have no jurisdiction to enforce a right or title acquired under foreign bankrupt laws, or foreign bankrupt proceedings, so far as it affects property within their jurisdiction or demands against residents of the state (Mosselman et al. v. Caen, 10 N. B. R. 512); or where the bankruptcy court has acquired jurisdiction of the estate of a bankrupt, claims against him provable under the law, except specific liens upon his property, and legal or equitable claims of title thereto (Woolfolk v. Murray, 10 N. B. R. 540; Fed. Cas. 18023); over a suit of a creditor to set aside conveyances to insolvent's wife of property purchased with his funds and appropriate the proceeds to the payment of his debt, as the assignee in bankruptcy is a necessary party to the suit, as such rights and interests vest in him (Winters et al. v. Claitor et al., 13 N. B. R. 533); to withdraw property surrendered to a bankruptcy court, nor determine in any degree the manner of its disposition (In re Barrow, 1 N. B. R. 125; 1 Amer. Law T. Rep. Bankr. 63; Fed. Cas. 1057); of action by creditor who proved his claim, voted upon the resolution of composition, and accepted his proportionate share in money and promissory notes, given in pursuance of said resolution to secure payment of future instalment (Deford et al. v. Hewlett, 13 N. B. R. 518); to garnish an assignee holding the warrant of the register to pay certain creditors at the instance of a creditor of one of the creditors named in the warrant (In re Bridgman, 2 N. B. R. 84; 1

Chi. Leg. News, 103; Fed. Cas. 1867); or of an action by a party who purchases a chose in action from the assignee, in his own name, where the laws of the state do not permit an assignee of a chose in action to sue in his own name. (*Leach v. Greene*, 12 N. B. R. 376.) A state court's jurisdiction does not extend to the administering of the assets of an insolvent bank whose charter has been declared forfeited; but the property of the corporation should be surrendered into a court of bankruptcy to be there administered upon (*Thornhill et al. v. Bank*, 3 N. B. R. 110; 3 Amer. Law T. 88; 2 Chi. Leg. News, 157; 1 Amer. Law T. Rep. Bankr. 156; Fed. Cas. 13990); it cannot review the decision of a United States district court. (*Maxwell v. McCune et al.*, 10 N. B. R. 306.)

A creditor who proves his debt and asserts his lien in the bankrupt court and participates as a party in the proceedings is not entitled to resort to a state tribunal to enforce his lien against the same property which was the subject of adjudication in the bankrupt court. (*Spilman v. Johnson*, 16 N. B. R. 145.) The executor of a judgment creditor moved in the state court for an execution. The debtor had been discharged in bankruptcy between the date of the judgment and the date of the motion, and the creditor had not proved in bankruptcy, although the claim was scheduled and notice was sent to the testatrix. Plaintiff claimed that the judgment roll of the superior court created a lien which the bankruptcy proceedings did not dissolve, and that he was entitled to enforce the lien in the state court. It was held that the bankrupt court did not divest the lien, but was the only proper tribunal to administer the remedy for the enforcement of the lien. (*Blum v. Ellis*, 13 N. B. R. 845.) Proceedings for discovery will not lie before a state officer, but must be taken in the bankruptcy court. (*Ex parte Taylor*, 16 N. B. R. 40; 1 Hughes, 617; 24 Pittsb. Leg. J. 205; Fed. Cas. 13773.) If an assignee under a state law has turned over the estate to the assignee in bankruptcy, the bankrupt law and not the state law governs. (*In re Bonsfield & Poole Mfg. Co.*, 17 N. B. R. 153; Fed. Cas. 1704.) A state court has no authority to order a bank, in which funds belonging to a bankrupt's estate are deposited, to pay out of such funds a judgment rendered against the assignee. (*Havens v. Bank*, 13 N. B. R. 95.)

**Collateral attack of decisions of bankrupt courts.**—Every presumption is in favor of the validity of the adjudication, in a collateral action, where the bankrupt appears after due notice and makes no objection to the court's jurisdiction, and cannot be questioned. (*New Lamp Chimney Co. v. Brass and Copper Co.*, 13 N. B. R. 385; 91 U. S. 656.) The validity of an order directing the payment of the balance due on subscriptions cannot be questioned in collateral action (*Sanger v. Upton, Ass.*, 13 N. B. R. 226; 91 U. S. 56); nor can a discharge be impeached in a state court (*Black v. Blazo*, 13 N. B. R. 195; *Alston v. Robinett*, 9 N. B. R. 74; *Corey v. Ripley*, 4 N. B. R. 163); nor can the acts of an assignee in bankruptcy. (*Morris et al. v. Swartz*, 10 N. B. R. 305.) But it has been held that a state court

may impeach the jurisdiction of the bankrupt court. (*Isett v. Stuart*, 16 N. B. R. 191.) The question of whether an assignment under a state law is void may be raised in a collateral action. (*Shryock et al. v. Bashore*, 18 N. B. R. 481; *Fed. Cas.* 12820.) And if an assignee sells to a third person property in which the bankrupt had title at the time of adjudication of bankruptcy, no other court can inquire whether such property was exempt from the assignment in bankruptcy. (*Steele v. Moody*, 16 N. B. R. 558.)

United States district court cannot correct or annul judgment.—The United States district court has no jurisdiction to correct or annul, upon appeal or petition, a judgment which has been rendered in a state court; nor can it question the allegations filed in the said district court with a petition to restrain the sale of real estate for any cause that may be set forth. (*In re Dunn*, 11 N. B. R. 270; 2 *Hughes*, 169; *Fed. Cas.* 4172; *McKinsey et al. v. Harding*, 4 N. B. R. 10; *Fed. Cas.* 8868.)

Practice in state courts.—The Bankrupt Act is the law of the state courts as well as of the national tribunals, and if by virtue of that act the state court has no jurisdiction in an action brought, it will so decide upon proper plea (*In re Central Bank*, 6 N. B. R. 207; *Fed. Cas.* 2547); but a state court, passing upon claims of assignees in bankruptcy, is not proceeding under the Bankrupt Act, but simply recognizes that act as the source of the assignee's title, in like manner as it would if such title was derived from a contract or deed. (*Cook v. Waters et al.*, 9 N. B. R. 155.) An attachment issued by a state court against a corporation more than four months before the commencement of the proceedings in bankruptcy will not be dismissed for want of jurisdiction. (*Munson v. Railroad Co.*, 14 N. B. R. 178.) A sale fraudulent under the bankrupt law cannot be annulled by a state court on that ground; but when such is avoided by proceedings in a bankrupt court, it is the duty of a state court to carry out and enforce the decision. (*Bromley v. Goodrich et al.*, 15 N. B. R. 269.) An action in a state supreme court by creditors alleging that while a debtor was insolvent he purchased with his own money certain realty, and praying that the debtor be declared to hold the property in trust, will be stayed by the bankruptcy court, when, before the suit was commenced, a voluntary petition was filed, and creditors proved their debts. (*In re Meyers*, 1 N. B. R. 162; 2 *Ben.* 424; *Fed. Cas.* 9518.) Where there is a co-assignee, and the assignee plaintiff in a suit has absconded, it is not proper to proceed further with the suit until proper proceedings are taken by the defendant, on notice to the co-assignee, to bring him in and compel him to elect whether he will or not be made a party plaintiff to the suit, and become responsible for his conduct (*Fenton, Ass., v. Collierd*, 11 N. B. R. 535; 8 *Ben.* 27; *Fed. Cas.* 4731); the decree of foreclosure and the sale in state court, made after the bankruptcy proceedings were commenced, is a bar to the right of the assignee to raise the question of usury. (*Cutter, Ass., etc. v. Dingee*, 14 N. B. R. 294; 8 *Ben.* 400; *Fed. Cas.* 3518.) In an action by the assignee in a state court he need

not establish the jurisdiction of the bankruptcy court, showing the adjudication in bankruptcy; his appointment as assignee and the assignment to him of the bankrupt's estate is sufficient. (*Cone, Ass. v. Purcell*, 11 N. B. R. 490.) On motion in a state court, an attachment issued within four months before the beginning of bankruptcy proceedings will be dissolved, although judgment has been entered and proceeds of sale paid to plaintiff by the sheriff. (*Dickerson v. Spaulding et al., Assignees*, 15 N. B. R. 213.)

**Acts of state courts which bind federal courts.**—Where acts are done by state courts, in the proper exercise of their jurisdiction, which do not conflict with the decrees or jurisdiction of federal courts, such acts are valid and bind the federal courts. (*In re Keiler et al.*, 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647.) The finding of a state court that a debt was one created by the defalcation of a bankrupt while acting in a fiduciary capacity is conclusive on the bankruptcy court. (*In re Whitney*, 18 N. B. R. 563; Fed. Cas. 17581.) Whatever is declared and treated as a valid levy and a valid and subsisting lien by the state laws and courts will be so treated by the bankruptcy court. (*Armstrong, Ass. v. Rickey*, 2 N. B. R. 150; 1 Chi. Leg. News, 145; 2 Amer. Law T. Rep. Bankr. 65; Fed. Cas. 546.) When an assignee in bankruptcy voluntarily submits himself to the jurisdiction of a state court, he cannot after judgment object to the power of such court, and a federal court cannot assume jurisdiction (*Scott v. Kelly, Sheriff*, 12 N. B. R. 96; 22 Wall. 57); but in general, decisions of state courts are not binding on the bankruptcy court, although provisions in state insolvent laws may be similar to those of the Bankrupt Act. (*In re Knight*, 8 N. B. R. 436; 30 Leg. Int. 338; 21 Pittsb. Leg. J. 43; Fed. Cas. 7880.)

It was held under the act of 1867 that a state court first obtaining possession of property and control of litigation has the right to finish proceedings before interference by the bankruptcy court, and any rights of the assignee will be protected (*Appleton v. Bowles et al.*, 9 N. B. R. 354); and that congress cannot impose upon state courts any duties in connection with the enforcement of the bankrupt laws. (*Goodall v. Tuttle*, 7 N. B. R. 193; 3 Biss. 219; 5 Amer. L. T. Rep. (U. S. Ct.) 240; 7 West. Jur. 32; 4 Chi. Leg. News, 473, 485; Fed. Cas. 5533.)

**Costs.**—See COSTS, *ante*, p. 30.

**Concurrent jurisdiction.**—State courts have concurrent jurisdiction with the United States courts of actions and suits in which a bankrupt or his assignee is a party. (*Claffin v. Houseman, Ass.*, 15 N. B. R. 50; *Samson v. Burton*, 4 N. B. R. 1; 5 Ben. 343; Fed. Cas. 12285; *Payson v. Dietz*, 8 N. B. R. 193; 2 Dill. 504; Fed. Cas. 10861; *Gilbert v. Priest*, *id.* 159; *Kidder, Ass. v. Harriban*, 18 N. B. R. 146; *Wente v. Young et al.*, 17 N. B. R. 90; *Goodrich v. Wilson*, 14 N. B. R. 555.) Where a receiver has been appointed by a state court to take possession of the property of a corporation, a United States court will not appoint



a receiver for that purpose, as the jurisdiction is concurrent. (*Blake v. Alabama & Chattanooga R. R. Co.*, 6 N. B. R. 331; Fed. Cas. 1493.) But in general, the state court under state laws, and the federal court under bankruptcy laws, have not concurrent jurisdiction, and the latter are not prevented from acting because the former has obtained jurisdiction of the parties under the state laws. (*In re Merchants' Insurance Co.*, 6 N. B. R. 43; 3 Biss. 163; 20 Pittsb. Leg. J. 32; 4 Chi. Leg. News, 73; Fed. Cas. 9441.)

**Sec. 24. Jurisdiction of appellate courts.**—*a.* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

[Act of 1867. For analogous provision see secs. 8 and 24, which follow section 25 of this act.]

To all intents and purposes the session of the appellate courts is continuous throughout the year, as they are invested with the appellate jurisdiction of bankruptcy controversies in vacation in chambers and during their respective terms. This right of review is limited to proceedings in the courts of bankruptcy, and not to the rulings or action of either referee or trustee. Under this section appeals from the Supreme Court of the District of Columbia are taken immediately to the Supreme Court of the United States instead of through the court of appeals of the district. Section 25 provides for the class of cases that may be reviewed, and fixes the time for the same.

The following statutory provisions have particular reference to the jurisdiction of the Supreme Court:

U. S. R. S., secs. 687-710, 5261.

The act of April 7, 1874, ch. 80 (1 Supp. R. S. 7), which provides that the appellate jurisdiction of the Supreme Court over judgments and decrees of territorial courts, in cases of trial by jury, shall be by writ of error, and in other cases by appeal, etc.

The act of February 16, 1875, ch. 77, sec. 1 (1 Supp. R. S. 62, 63), limits the review by the Supreme Court of decrees of circuit courts in admi-

ralty cases to questions of law arising on findings of fact to be made in such cases by circuit courts.

The act of March 3, 1885, ch. 353 (1 Supp. R. S. 485), provides for an appeal to the Supreme Court in cases of *habeas corpus*.

The act of March 3, 1885, ch. 355 (1 Supp. R. S. 485), regulates appeals from the Supreme Court of the District of Columbia and the territories.

The act of August 13, 1888, ch. 866, secs. 1, 6 (1 Supp. R. S. 613, 614), takes away the right of review by the Supreme Court of orders of circuit courts remanding causes to state courts.

The act of February 25, 1889, ch. 266 (1 Supp. R. S. 650), provides for writs of error or appeals to the Supreme Court in cases involving the question of the jurisdiction of circuit courts.

The act of March 3, 1891 (1 Supp. R. S. 901), makes provision for appeals to the Supreme Court of the United States in view of the creation of the circuit courts of appeals.

While there are numerous other provisions relating to the jurisdiction of the Supreme Court, the above are the most important in connection with civil matters.

b. The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

**When appeal allowed.**—The right of review of bankruptcy proceedings by the United States circuit courts has been replaced by the circuit courts of appeal, but this right is limited to revisions in matter of law; and while differences exist between the act of 1867 and the present law relative to this question of review, reference is made to some of the decisions, as perhaps being useful by analogy.

An order of the court discharging a bankrupt cannot be reviewed in the circuit court, where the record presents only questions of fact (*Rudick v. Billings*, 3 N. B. R. 14; *Woolw.* 330; 2 West. Jur. 275; *Fed. Cas.* 12110); nor can it go behind a general finding to inquire into the weight and sufficiency of evidence (*Babbitt v. Burgess*, 7 N. B. R. 561; 2 Dill. 169; 5 Chi. Leg. News, 326; *Fed. Cas.* 693); nor can it decide questions, either of law or fact, that were not raised or involved in the decision of the district court (*In re Jaycox et al.*, 13 N. B. R. 122; *Fed. Cas.* 7244); or that do not appear on the record. (*Serra é Hijo v. Hoffman & Co.*, 17 N. B. R. 124.)

Ordinarily nothing can be done but to dismiss when both the circuit court and the Supreme Court are without jurisdiction; but this rule

would not apply where the circuit court had rendered a judgment in favor of party bringing suit. In such case the Supreme Court will reverse the judgment in the court below and remand the cause with directions to dismiss (*Stickney, Ass., v. Wilt*, 11 N. B. R. 97; 23 Wall. 150); and, as a rule, a case wrongfully appealed should be dismissed, except where dismissal would give force to an erroneous decree entered in a case over which the court has no jurisdiction. (*Id.*)

Instructions are entitled to reasonable construction, and, if correct when applied to the facts submitted to the jury, they will be sustained in an appellate court, even though, when standing alone, they would be incomplete. (*Willis v. Carpenter*, 14 N. B. R. 521; Fed. Cas. 17770.)

To superintend and revise—Interlocutory matters.—From a decision of a circuit court, in the exercise of the supervisory jurisdiction granted to it, on proceedings in bankruptcy of a summary character, no appeal will lie. (*Hall v. Allen*, 9 N. B. R. 6; 12 Wall. 452.)

Exceptions were taken to report of a register stating that he postponed proof of certain claims and declaring A. elected assignee. The district court held that he erred in postponing said claims and that no legal election was held. Thereupon B. was appointed assignee. Upon a petition to the circuit court for a review of proceedings, it was held that no principles of equity being involved, and the district court having large discretionary powers in the matter, the circuit court would not interfere. (*Woods et al. v. Buckwell et al.*, 7 N. B. R. 405; 2 Dill 88; 6 Alb. Law J. 291; Fed. Cas. 17991.) A judge sitting at chambers has the same jurisdiction as when sitting in court, and all adjudication, or orders so made, may be revised in the circuit court for the district where the proceedings shall be pending. (*Shearman v. Bingham et al.*, 7 N. B. R. 490; *Hall v. Allen*, 9 N. B. R. 6; 12 Wall. 452. See *Morgan v. Thornhill*, 5 N. B. R. 1; 11 Wall. 65.)

An appeal cannot be used to give a party a second trial, but only for re-examination and revision of rulings and decrees. (*In re Dow*, 6 N. B. R. 10; Fed. Cas. 4036.)

An appeal to the circuit court to review the district court granting a discharge, and to decree that the bankrupt is not entitled to discharge, with a prayer for such further order and relief in the premises as to the court may seem just, is an appeal to the circuit court in the exercise of supervisory jurisdiction, and its decision is final. (*Mead v. Thompson*, 8 N. B. R. 529; 15 Wall. 635.)

On refusal of the circuit court to entertain a writ of error properly sued out, the Supreme Court has power to issue *mandamus* to the circuit court to decide the cause. (*Knickerbocker Ins. Co. v. Comstock*, 8 N. B. R. 145; 16 Wall. 258.)

**Sec. 25. Appeals and writs of error.**—*a.* That appeals, as in equity cases, may be taken in bankruptcy proceedings

from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

[Act of 1867. SEC. 8. . . . That appeals may be taken from the district to the circuit courts in all cases in equity, and writs of error may be allowed to said circuit courts from said district courts in cases at law under the jurisdiction created by this act, when the debt or damages claimed amount to more than five hundred dollars, and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim may appeal from a decision of the district court to the circuit court from the same district, but no appeal shall be allowed in any case from the district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the proceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from. The appeal shall be entered at the term of the circuit court which shall be first held within and for the district next after the expiration of ten days from the time of claiming the same. But if the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken; and no appeal shall be allowed unless the appellant at the time of claiming the same shall give bond in man[ner] now required by law in cases of such appeals. No writ of error shall be allowed unless the party claiming it shall comply with the statutes regulating the granting of such writs. . . .

SEC. 24. That a supposed creditor who takes an appeal to the circuit court from the decision of the district court, rejecting his claim in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof a statement in writing of his claim, setting forth the same,

substantially, as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause, as in action at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The final judgment of the court shall be conclusive.]

Contrary to the former law, no provision has been made for a special form of appeal; but the practice is similar to that in equity cases in the federal courts, except that the time for taking the appeal is limited, and must be within ten days after the judgment appealed from has been rendered.

In computing this time the day of the judgment is excluded, under the rule that in computing the time the first day is excluded and the last included, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday. (Sec. 81.) As to the jurisdiction of the appellate court in bankruptcy matters, see section 24. For the general jurisdiction of the circuit courts of appeals, see 1 Supp. U. S. R. S. 901.

**In what cases allowed.**—A proceeding to have a debtor adjudged bankrupt terminates with the judgment on the petition; and the subsequent proceedings to distribute the estate of the bankrupt are consequent upon such action, but form no part of it; and the proceedings therein cannot be reviewed in the circuit court until after judgment. (In re Oregon Bulletin Printing & Publishing Co., 14 N. B. R. 894; 8 Sawy. 529; 8 Chi. Leg. News, 148; Fed. Cas. 10560.)

The court overlooked specifications filed by a creditor and granted a discharge without considering them. It was held that it was a proper subject of review by the circuit court. (In re Buchstein, 17 N. B. R. 1; 9 Ben. 215; Fed. Cas. 2076.) An order of the district court discharging a bankrupt cannot be reviewed in the circuit court on writ of error, when the record presents questions of fact. (Ruddick v. Billings, 8 N. B. R. 14; Woolw. 880; 2 West. Jur. 275; Fed. Cas. 12110.)

Where bankrupt seeks to prevent the establishment of a claim, he has sufficient interest to entitle him to appeal from judgment thereon. If he be declared a bankrupt after the taking of appeal and the judgment below be affirmed, he may appeal from the affirmance. (Sanford v. Sanford, 12 N. B. R. 565.)

It was held under the act of 1867, that an appeal from a district court to the circuit court will lie upon a final decree in a suit in equity instituted by or against an assignee where the sum in controversy exceeds \$500. (In re Zug et al., 16 N. B. R. 280; 23 Int. Rev. Rec. 892; 84 Leg. Int. 402; 25 Pittsb. Leg. J. 29; Fed. Cas. 18222.)

Where no bond has been filed in a case of appeal, no appeal can be allowed after the expiration of the time limited from the entry of the decree, as the district court cannot enlarge the right of appeal. (*Benjamin v. Hart*, 4 N. B. R. 138; 4 Ben. 454; Fed. Cas. 1302.) In computing the time within which an appeal in bankruptcy must be taken, Sunday is counted, except when the last day would fall on Sunday, when it is excluded. (*In re York & Hoover*, 4 N. B. R. 155; 10 Amer. Law Reg. (N. S.) 3; Fed. Cas. 18139.)

No appeal lies to the Supreme Court from a decision of the circuit court upon a petition to have an adjudication set aside (*Sandusky v. Bank*, 12 N. B. R. 176; 23 Wall. 289); nor does it lie to review the action of the circuit courts in the exercise of supervisory jurisdiction. (*Wiswall et al. v. Campbell et al.*, 15 N. B. R. 421 (N. S.); *First Nat. Bank of Troy v. Cooper et al.*, 9 N. B. R. 529; 20 Wall. 171.) A refusal by the circuit court to entertain a bill to review district court proceedings gives no right of appeal to the United States Supreme Court, the presumption being that refusal was based upon want of merits; but where refusal is for want of jurisdiction, an appeal will lie to enable the complainants to have a hearing before the circuit court, if the Supreme Court decides them to be thereto entitled (*First Nat. Bank of Troy v. Cooper et al.*, 9 N. B. R. 529; 20 Wall. 171); and where a party appeals from the circuit to the United States Supreme Court, the allowance of the appeal is to relate back to the time when the original application was made for appeal to the circuit court, and entitles a party to a stay of proceedings. (*Thornhill et al. v. Bank of Louisiana*, 5 N. B. R. 377; 4 Amer. Law T. Rep. (U. S. Ct.) 245; 1 Amer. Law T. Rep. Bankr. 237; Fed. Cas. 13991.)

b. From any final decision of a court of appeals, allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

The Supreme Court provides in Orders 33 that the lower court, when rendering judgment or decree, must make and file a finding of the facts and its conclusions of law thereon, stated separately, and the record to be transmitted to the Supreme Court is to contain only the pleadings, the judgment or decree, the finding of facts and the conclusions of law. Such appeals must be taken within thirty days after judgment.

1. Where the amount in controversy exceeds the sum of two thousand dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

[Act of 1867. SEC. 9. . . . That in cases arising under this act no appeal or writ of error shall be allowed in any case from the circuit courts to the Supreme Court of the United States, unless the matter in dispute in such case shall exceed two thousand dollars.]

**What constitutes matter or amount in controversy.**—As to what constitutes “matter in controversy” or “matter in dispute,” the supreme court has long since definitely stated the law. Chief Justice Taney, in *Barry v. Barry* (5 How. 103), states that matter in controversy, under section 22 of the Judiciary Act, must be “money or some right, the value of which, in money, can be calculated and ascertained. . . . The words of the act of congress are plain and unambiguous. They give the right of revision in those cases only where the rights of property are concerned, and where the matter in dispute has a known and certain value, which can be proved and calculated, in the ordinary mode of business transactions. . . . It is the same in judgments in criminal cases, although the liberty or life of the party may depend on the decision of the circuit court.” Chief Justice Marshall, in passing upon this same question in *Gordon v. Ogden* (3 Pet. 33), said: “The jurisdiction of the court has been supposed to depend on the sum or the value of the matter in dispute in this court, not on that which was in dispute in the circuit court. If the writ of error be brought by the plaintiff below, then the sum which his declaration shows to be due may be still recovered, should the judgment for a smaller sum be reversed; and consequently the matter in dispute cannot exceed the amount of that judgment. Nothing but that judgment is in dispute between the parties.” The same view is laid down in *Kanouse v. Martin* (15 How. 198), wherein it is held that: “The settled rule is, that until some further judicial proceedings have taken place, showing upon the record that the sum demanded in the declaration is not the matter in dispute, that sum is the matter in dispute.”

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

c. Trustees shall not be required to give bond when they take appeals or sue out writs of error.

d. Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and

issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

Rule 14 of the Rules of the Supreme Court of the United States adopted January 7, 1884, and still in force, provides as follows: "No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court accounting satisfactorily for the delay."

By the act of March 3, 1891 (1 Supp. R. S. 903, sec. 6), it is provided that the Supreme Court may require by *certiorari* or otherwise certain cases made final in the circuit courts of appeals to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court.

**Sec. 26. Arbitration of controversies.**—*a*. The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

*b*. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

*c*. The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

[Act of 1867. SEC. 17. . . . He may, under the direction of the court, submit any controversy arising in the settlement of demands against the estate, or of debts due it, to the determination of arbitrators, to be chosen by him, and the other party to the controversy, and may, under such direction, compound and settle any such controversy, by agreement with the other party, as he thinks proper and most for the interest of the creditors.]



This provision affords an expeditious and inexpensive mode of adjusting, without litigation, many of the contested claims arising in the settlement of an estate. The application of the trustee to submit a controversy to the determination of arbitrators must clearly and distinctly set forth the subject-matter of the controversy and the reasons why he thinks it proper and for the best interests of the estate to have the controversy so settled. (Orders XXXIII.)

A bankrupt was a party to the submission of a controversy to register; held, that he was bound by the decision, in a collateral action. (*Johnson v. Worden*, 18 N. B. R. 335.)

**Sec. 27. Compromises.—a.** The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

[Act of 1867. Sec. 17. . . . The assignee . . . may, under such direction [i. e. of the court], compound and settle any such controversy by agreement with the other party, as he thinks proper and most for the interest of the creditors.]

To be obliged to litigate all of the contested claims arising in the settlement of an estate would prove a source of great expense and delay, which this section seeks to avoid by providing an economic and speedy mode by which the trustee may dispose of the same as advantageously as possible to the estate. Creditors, however, must have at least ten days' notice by mail of the proposed compromise of any controversy. (Sec. 58, a, 7.)

Assignee will not be authorized by the court to compound debts for the purpose of compromising the same under direction of a committee of creditors, where all creditors did not vote when such committee was appointed. (*In re Dibblee*, 3 N. B. R. 17; 3 Ben. 354; Fed. Cas. 3885.)

**Sec. 28. Designation of newspapers.—a.** Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this Act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

[Act of 1867. SEC. 11. . . . And the judge of the district court, or if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed \$300, issue a warrant . . . directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies, etc.]

Each district must have designated at least one newspaper in which the notices to creditors of the first meeting shall be published at least once, and such number of additional times as the court may direct, as well as of such other notices as the court may direct. (Sec. 53, b.)

Under the old law a failure to publish, in one of the newspapers designated for the purpose, notice of the first meeting of the creditors to prove their debts and choose an assignee, rendered all subsequent proceedings void. (*In re Hall*, 2 N. B. R. 68; 16 Pittsb. Leg. J. 53; Fed. Cas. 5922.)

**Sec. 29. Offenses.—a.** A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

Courts of bankruptcy within their respective territorial limits have jurisdiction to arraign, try and punish bankrupts, officers and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this act, in accordance with the procedure of the United States now in force, or such as may hereafter be enacted, regulating trials for the alleged violation of the laws of the United States. (Sec. 2—4.) The United States circuit courts have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this act. (Sec. 23, c.) Alleged offenses under this act may be submitted to a jury according to the laws of the United States now in force, or such as may hereafter be enacted in relation to trials by jury. (Sec. 19, c.)

The term "document" is defined to include any book, deed or instrument in writing. (Sec. 1—13.)

Offenses under the bankruptcy law may be prosecuted on informations. (*United States v. Block*, 15 N. B. R. 325; 4 Sawy. 211; 6 Chi. Leg. News,

284; Fed. Cas. 14609.) If the bankruptcy court obtains jurisdiction over violators of the law, it may enforce the provisions of the law against them, although they may be aliens. (*Olcott, Ass., v. McLean et al.*, 14 N. B. R. 379.) Indictments should set forth all matters necessary to constitute the offense as defined in the act; figures should not be used for dates; the word "feloniously" should be omitted, as the offenses under the act are misdemeanors. (*United States v. Prescott*, 4 N. B. R. 29; 18 Pittsb. Leg. J. 21; 2 Biss. 325; Fed. Cas. 16084.)

b. A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bankruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

[Act of 1867. SEC. 7. . . . All persons wilfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury.

SEC. 44. . . . If any debtor or bankrupt shall, after the commencement of proceedings in bankruptcy, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof out of the district, or otherwise dispose of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay either of them in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with the like intent,

or spends any part thereof in gaming; or shall, with intent to defraud, wilfully and fraudulently conceal from his assignee or omit from his schedule any property or effects whatsoever; or if, in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud; or shall, with intent to defraud his creditors, within three months next before the commencement of proceedings in bankruptcy, pawn, pledge, or dispose of, otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of the United States, shall be punished by imprisonment, with or without hard labor, for a term not exceeding three years.

SEC. 45. . . . That if any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this act, or under color of doing anything thereunder, wilfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by this act, or which shall be allowed under the authority thereof, such person, when convicted thereof, shall forfeit and pay the sum of not less than three hundred dollars and not exceeding five hundred dollars, and be imprisoned not exceeding three years.

SEC. 46. . . . That if any person shall forge the signature of a judge, register or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, knowing such

signature or seal to be false or counterfeit, any such person shall be guilty of felony, and upon conviction thereof shall be liable to a fine of not less than five hundred dollars, and not more than five thousand dollars, and to be imprisoned not exceeding five years, at the discretion of the court.]

Where the debtor is found and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against him. (Orders IX.)

The word "conceal" includes secrete, falsify and mutilate. (Sec. 1—22.) A discharge will be revoked or a composition set aside on a showing that it was induced through fraud. (Secs. 13, 15.)

In order to convict a bankrupt for concealing assets from the assignee it is not necessary to prove demand made by assignee for the assets in question. (*United States v. Smith*, 13 N. B. R. 61; *Fed. Cas.* 16839.)

To omit a judgment from a schedule of assets because it never occurred to the bankrupt to place it there, or because he considered it worthless, does not constitute false swearing. (*In re Winsor* 16 N. B. R. 159; 9 *Chi. Leg. News*, 402; 2 *Cin. Law Bul.* 212; *Fed. Cas.* 17885.) The crime of fraudulently omitting property or effects from a bankrupt schedule is complete when the false schedule is filed. (*United States v. Clark*, 4 N. B. R. 14; 1 *Amer. Law T. Rep. Bankr.* 237; 3 *Amer. Law T.* 226; *Fed. Cas.* 14806.)

Under the law of 1867 a creditor could contract to refrain from instituting bankruptcy proceedings against a debtor. (*Eoker v. McAllister*, 17 N. B. R. 42.)

a. A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

Referees must not act in cases in which they are directly or indirectly interested, practice as attorneys and counselors at law in any bankruptcy proceedings, or purchase, directly or indirectly, any property of an estate in bankruptcy. (Sec. 89, b.)

*d*. A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

**Sec. 30. Rules, forms, and orders.**—*a*. All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

[Act of 1867. SEC. 10. . . . That the Justices of the Supreme Court of the United States, subject to the provisions of this act, shall frame general orders for the following purposes:

For regulating the practice and procedure of the district courts in bankruptcy, and the several forms of petitions, orders, and other proceedings to be used in said courts in all matters under this act;

For regulating the duties of the various officers of said courts;

For regulating the fees payable and the charges and costs to be allowed, except such as are established by this act or by law, with respect to all proceedings in bankruptcy before said courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings;

For regulating the practice and procedure upon appeals;

For regulating the filing, custody, and inspection of records;

And generally for carrying the provisions of this act into effect.

After such general orders shall have been so framed, they or any of them may be rescinded or varied, and other general orders may be framed in manner aforesaid; and all such general orders so framed shall from time to time be reported to Congress, with such suggestions as said justices may think proper.]

As the object and value of a federal bankruptcy law lies in its uniformity, the course of procedure and forms, in order to their validity, should conform, as nearly as possible, to those promulgated by the Supreme Court of the United States.

The power to establish a system of bankruptcy carries with it the power to establish the details of the system if Congress shall think proper. (*Six Penny Savings Bank et al. v. Bank*, 10 N. B. R. 399; *Fed. Cas.* 12919.)

**Rules of procedure.**—The general rules and orders made by the Supreme Court are not designed to create or declare, nor do they create and declare, the rights of creditors in the estate of the bankrupt; still less do they abrogate and annul those rights. (In re Baxter et al., 18 N. B. R. 560; Fed. Cas. 1121.) The district courts have no power to make general rules in bankruptcy. (In re Kennedy et al., 7 N. B. R. 837; Fed. Cas. 7699.)

Courts of bankruptcy are not hampered by such technical rules as will prevent the doing of what is just, and for the protection of the state, even if it required the revocation of an order once made. (Samson v. Burton, 6 N. B. R. 403.)

**Sec. 31. Computation of time.**—*a.* Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

[Act of 1867. Sec. 48. . . . And in all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first, and inclusive of the last day, unless the last day shall fall on a Sunday, Christmas day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the fourth of July, in which case the time shall be reckoned exclusive of that day also.]

Bankruptcy was adjudicated November 26, 1867; the bankrupt filed his application for discharge November 27, 1868; November 26, 1868, was Thanksgiving day; the court held that the application was made within one year as required by the act, under the equity and fair construction of the provision for computation of time. (In re Lang, 2 N. B. R. 151; Fed. Cas. 8056.) In computing the time within which an appeal in bankruptcy must be taken, Sunday is to be counted, except when the last day would fall on Sunday, in which case Sunday is excluded. (In re York et al., 4 N. B. R. 156; Fed. Cas. 18139.) The day on which the petition was filed is excluded in computing the time a preference must stand in order to be valid. (Dutcher v. Wright, Ass., etc., 16 N. B. R. 331; 94 U. S. 553.)

**Sec. 32. Transfer of cases.—a.** In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

Where two petitions are filed against the same individual in different districts, the first hearing must be had in the district in which the debtor has his domicile; and where there are two or more petitions against the same partnership in different courts, each having jurisdiction, the petition first filed shall be first heard, and in either case the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard, and the court which makes the first adjudication retains jurisdiction over all the proceedings until the same is closed. (Orders VI.)

It is frequently the case that a person may reside in the jurisdiction of one court, do business in another, and have his domicile in still another; or, in the case of a partnership, each member of a firm may live in different judicial districts and transact business in still others, so that a number of courts may at the same time have jurisdiction to render an adjudication of bankruptcy. This section provides for such a contingency. The power of transfer is conferred by section 2 (19). A court which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property. (Sec. 5, c.)

Under the law of 1867 the court whose jurisdiction was first invoked had entire control, and proceedings in other courts were stayed or dismissed. (In re Boston, H. & E. R. R. Co., 6 N. B. R. 209; 9 Blatchf. 101; 6 Amer. Law Rev. 582; Fed. Cas. 1678; Shearman et al. v. Bingham et al., 5 N. B. R. 34; 1 Lowell, 575; Fed. Cas. 12733; In re Leland, 5 N. B. R. 222; 5 Ben. 168; Fed. Cas. 8228; *vide* especially as to partners, In re Smith, 3 N. B. R. 15.) It will be noticed that the present law makes the "greatest convenience of parties" the ground for the transfer and relinquishment of jurisdiction.



## CHAPTER V.

### OFFICERS, THEIR DUTIES AND COMPENSATION.

**Sec. 33. Creation of two offices.**—*a.* The offices of referee and trustee are hereby created.

The offices of referee and trustee created by this act correspond substantially to those of register and assignee under the act of 1867. While these are the only two offices specifically created, provision is also made for the appointment of receivers and the designation of marshals to take charge of the property of bankrupts after the petition has been filed and until dismissed, or the trustees have qualified, in case it becomes necessary for the preservation of the estate. (Sec. 2—3.) The referee is an officer of the United States, and as such is entitled to transmit through the mail free, in penalty envelopes, exclusively official mail matter in accordance with the provisions of section 368, Postal Laws and Regulations (p. 159, Act of July 5, 1884).

**Sec. 34. Appointment, removal, and districts of referees.**—*a.* Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

[Act of 1867. SEC. 3. . . . That it shall be the duty of the judges of the district courts of the United States, within and for the several districts, to appoint in each Congressional district in said districts upon the nomination and recommendation of the Chief Justice of the Supreme Court of the United States, one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act.

SEC. 5. . . . Such registers shall be subject to removal by the judge of the district court. . . .]

The referee under this act occupies an office corresponding to that of register under the act of 1867. To a limited extent he exercises judicial functions, and is essentially an assistant to the judge in the district for which appointed. He must take the oath of office prescribed for judges of United States courts in section 712, U. S. R. S. (Sec. 36.) He is liable to punishment for conviction of the offense of acting as referee, when interested; purchasing property of the bankrupt's estate, or refusing to permit an inspection of his accounts. (Sec. 29, *c*.) See also note to sec. 33. The qualification of referees is provided for by section 35.

Under subdivision 2 of this section, each county where the services of a referee are needed may constitute at least one district. The number that may be appointed for each county is without limit; there may be as many as necessary to expeditiously transact the business. The practice obtaining in some courts of placing several counties in one district is erroneous. One serious complaint of the act of 1867 was the inconvenience and added expense resulting from the inaccessibility of courts and their officers, and to avoid a similar complaint the term "each county . . . may constitute at least one district" was used.

**Sec. 35. Qualifications of referees.**—*a*. Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

[Act of 1867. SEC. 3. . . . No person shall be eligible to such appointment unless he be a counselor of said court, or of some one of the courts of record of the state in which he resides.]

Consanguinity is the relation existing between persons descending from a common ancestor; affinity is the connection existing in conse-

quence of marriage between the husband or wife and the kindred of the other. The degrees in either case are computed alike, thus: counting from the bankrupt (or the husband or wife, as the case may be) up to the common ancestor and down to the party related, counting each person as one, and excluding the bankrupt (or the husband or wife, etc.).

The word "officer" is defined to include clerk, marshal, receiver, referee and trustee (sec. 1-18); and the word "referee" to mean the referee who has jurisdiction of the case or to whom the case has been referred, or any one acting in his stead. (Sec. 1-21.)

**Sec. 36. Oaths of office of referees.**—*a.* Referees shall take the same oath of office as that prescribed for judges of United States courts.

[Act of 1867. Sec. 3. . . . And he shall, in open court, take and subscribe the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July second, eighteen hundred and sixty-two, and also that he will not, during his continuance in office, be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy, in either the district or circuit court in his district.]

U. S. Rev. Stat., sec. 712, provides as follows: The justices of the Supreme Court, the circuit judges, and the district judges, hereafter appointed, shall take the following oath before they proceed to perform the duties of their respective offices: "I — —, do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as —, according to the best of my abilities and understanding, agreeably to the constitution and laws of the United States: So help me God."

**Sec. 37. Number of referees.**—*a.* Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

The number of referees for each district is to be determined by the amount of business, but each county must constitute at least one district and have at least one referee. (See sec. 34 and note.)

**Sec. 38. Jurisdiction of referees.**—*a.* Referees respectively are hereby invested, subject always to a review by the

judge, within the limits of their districts as established from time to time, with jurisdiction to (1) <sup>1</sup> consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) <sup>2</sup> exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) <sup>3</sup> exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) <sup>4</sup> perform such part of the duties, except as

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<sup>1</sup> If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge on the next day, if present, or as soon thereafter as practicable, shall make the adjudication or dismiss the petition. (Sec. 18, *e*.) If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee. (Sec. 18, *f*.) Upon the filing of a voluntary petition, the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee. (Sec. 18, *g*.)

<sup>2</sup> Referees are authorized to administer oaths (sec. 20, *a*), and are required to perform such part of the duties, except as to questions arising out of applications of bankrupts for compositions or discharges, as are conferred on courts of bankruptcy. (Sec. 38—4.) In case of contempt before a referee he is required to certify the facts to the judge, who, in a summary manner, hears the evidence of the acts complained of and imposes such punishment as he sees fit. (Sec. 41, *b*.)

<sup>3</sup> Upon satisfactory proof that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or is neglecting his property so that it is deteriorating in value, the judge may issue a warrant to the marshal to seize and hold it subject to further orders. (Sec. 69.)

<sup>4</sup> With the exception of the power of commitment and the power to pass upon questions arising out of the application of bankrupts for compositions or discharges, referees have generally the powers of courts of bankruptcy. (Sec. 2.)

to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5)<sup>1</sup> upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

[Act of 1867. SEC. 4. . . . That nothing in this section contained shall empower a register to commit for contempt or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge; but in all matters where an issue of fact or of law is raised and contested by any party to the proceedings before him, it shall be his duty to cause the question or issue to be stated by the opposing parties in writing, and he shall adjourn the same into court for decision by the judge.

SEC. 5. . . . and such register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the production of books, papers and documents.]

See General Order XII promulgated by the Supreme Court with reference to referees.

**Jurisdiction of register over petitions for adjudication.**—Petition was filed and defendant made default; adjudication was proper by register. (In re De Ford, 18 N. B. R. 454; Fed. Cas. 3744.) But where the petition is against firm, notice must be given to all members. (In re Lewis, 1 N. B. R. 19; 2 Ben. 96; Fed. Cas. 8311.) Petition will not be dismissed because the depositions supporting it are defective. (Cunningham v. Cady, 13 N. B. R. 525; 8 Chi. Leg. News, 165; 4 Amer. Law Rec. 510; Fed. Cas. 3480.) Irrelevant issues raised by a party not in court will be returned to the register undecided by the judge. (In re Haskell, 4 N. B. R. 181; Fed. Cas. 6191.) The register is an officer of the court and takes judicial notice of its judgments and decrees. (In re Scott, Collins & Co., 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519.)

<sup>1</sup> The necessary expenses incurred by officers in the administration of estates, unless otherwise provided, are to be reported in detail, under oath, examined and approved or disapproved by the court. If they are approved they are payable out of the estate in which incurred. (Sec. 62.)

**Over administering of oaths.**—When a creditor applied verbally for the examination of a bankrupt, it was held that the order could only be granted when applied for by petition, *duly verified*, showing good cause therefor (In re Adams, 2 N. B. R. 33; 2 Ben. 503; 36 How. Pr. 51; Fed. Cas. 39); and a witness cannot refuse to be sworn, on the ground that he acted as counsel for the bankrupt and is his legal adviser. (In re Woodward et al., 3 N. B. R. 177; 4 Ben. 102; Fed. Cas. 17999.) The oath of allegiance annexed to the petition of the debtor may be taken before a register. (In re Walker, 1 N. B. R. 67; Fed. Cas. 17062.) The affidavits or depositions taken before a register after the filing of the petition are valid, although proceedings may not be pending before him. (In re Deane, 2 N. B. R. 29; 15 Pittsb. Leg. J. 581, 583; Fed. Cas. 3700.)

**Over examination of bankrupt.**—Bankrupt as witness: An application for an order for the examination of a bankrupt before the register need show no cause therefor, nor be verified by an affidavit (In re McBrien, 2 N. B. R. 73; 2 Ben. 513; Fed. Cas. 8665; In re Lanier, 2 N. B. R. 59; Fed. Cas. 8070); it need not be in writing (In re Solis, 4 N. B. R. 18; Fed. Cas. 13165); and he may allow an order for the examination of the bankrupt by each creditor. (In re Adams, 2 N. B. R. 92; 3 Ben. 7; 36 How. Pr. 270; 1 Chi. Leg. News, 170; Fed. Cas. 40.) The register has not the power by announcement beforehand to fix a time within which the examination of debtor must be concluded without regard to the nature of questions or the interest in which they are propounded (In re Tift, 17 N. B. R. 421; Fed. Cas. 14036); but after a bankrupt's discharge, the register cannot order him to appear and submit to examination touching his acts prior to adjudication. (In re Dean, 3 N. B. R. 188; Fed. Cas. 3701.) The register must determine whether a bankrupt shall be allowed to consult his counsel during examination. (In re Lord, 3 N. B. R. 53; Fed. Cas. 8502.) See EVIDENCE, sec. 21.

**Manner of examination.**—The register must have power in composition proceedings to conduct inquiries and take down the substance of the answers and to adjourn the meeting, even in some cases against the wishes of one party or the other; but not to conduct a written examination as to all the inquiries which would be proper in bankruptcy; and he would be justified in refusing to permit inquiries beyond the day of meeting (In re Proby, 17 N. B. R. 175; 12 Amer. Law Rev. 593; Fed. Cas. 11439); and the register has no power to decide on competency, materiality or relevancy of any question, and has therefore no power to exclude any question. (In re Rosenfield, 1 N. B. R. 60; 15 Pittsb. Leg. J. 245; 1 Amer. Law T. Rep. Bankr. 47; Fed. Cas. 12059; In re Bond, 3 N. B. R. 2; Fed. Cas. 1618.) A register is not authorized to hear testimony as to a creditor's right to vote for assignee (In re Noble, 3 N. B. R. 25; 3 Ben. 332; Fed. Cas. 10282); and cannot make any binding decision or compel a witness to answer, if he refuses. (In re Koch, 1 N. B. R. 153; 1 Amer. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531; Fed. Cas. 7916.)

**Examination of assignee.**—An assignee may be required to testify as any other witness and the register has authority to make requisite order. He is not subject to an examination by creditor whenever the latter may desire it, and the register will refuse an application for his examination unless upon issues regularly referred to him. (In re Smith, 14 N. B. R. 432; Fed. Cas. 12988. *Contra*, In re Hicks et al, 19 N. B. R. 449; Fed. Cas. 6457.)

**As to proof of claim.**—A register has power to pass upon the validity of the proof of claims except when an issue of law or fact is raised (In re Bogert et al, 2 N. B. R. 139; 38 How. Pr. 111; 1 Chi. Leg. News, 211; Fed. Cas. 1598); and to postpone the proof of a claim where there are doubts as to validity, in view of preference contrary to the provision of the act of 1867 (In re Stevens, 4 N. B. R. 122; Fed. Cas. 13391); but if debts are objected to, the register cannot admit them to proof and allow a vote for assignee (In re Hunt, 17 N. B. R. 205; 85 Leg. Int. 71; Fed. Cas. 6884); nor has he power to expunge *prima facie* proofs of debt or to reject claims; nor has he authority to refuse the votes of the claimants nor to exclude them from dividend (In re Jaycox v. Green, 7 N. B. R. 303; 7 West. Jur. 18; Fed. Cas. 7240); nor was it competent for creditors and bankrupt to submit the question of the amount due to arbitration of register (In re Ford et al, 18 N. B. R. 426; Fed. Cas. 4932); nor for claimant and assignee to submit claim as to amount to register (Moran et al v. Bogart, 14 N. B. R. 393); but a creditor holding security is entitled to have his claim referred to the register for investigation, and the assignee is not justified in rejecting it until proofs have been taken. (In re Noonan & Co., 6 N. B. R. 579.)

**As to meetings and adjournment.**—A warrant was issued returnable on the 15th of September, but the register was prevented from attending. He made orders of adjournment and forwarded them, he being absent. It was held that the register had no authority to so adjourn a meeting, and a new warrant must issue (In re Dickinson, 18 N. B. R. 514; 26 Pittsb. Leg. J. 143; Fed. Cas. 3895); and when a creditor objects to postponement of his claim, he should have objection entered and the question certified to the court. (In re Jackson et al, 14 N. B. R. 449; 7 Biss. 230; Fed. Cas. 7123; R. S., 5034, 5078, 5083.)

**Production of books and papers.**—The court will order production of books and papers at the summary hearing on the return day of the order to show cause. (In re Mendenhall, 9 N. B. R. 285; Fed. Cas. 9423.)

**To perform certain duties of bankrupt court.**—He may proceed with cause until final discharge of the assignee from the case (In re Dole, 7 N. B. R. 538; 7 West. Jur. 629; Fed. Cas. 3965); and he may examine and pass upon a disputed claim, but such action is subject to review by the court. His power is not limited to postponement of a claim. (In re Keller et al, 18 N. B. R. 331; Fed. Cas. 7654.) He may hear motion *ex parte*, and can compel assignee to sign certificate showing names

and residences of creditors. (In re Blaisdell, 6 N. B. R. 78; 5 Ben. 420; 42 How. Pr. 274; Fed. Cas. 1488.) He may order the bankrupt to hand over to the custodian of the estate funds in his hands, and failure to obey is a contempt. (In re Speyer, 6 N. B. R. 255; 42 How. Pr. 307; Fed. Cas. 13239.) He may order assignee to furnish all necessary information as to the funds in his hands. (In re Clark et al., 6 N. B. R. 194; Fed. Cas. 2807.) Registers have entire control over proceedings pending before them, including the power to grant or refuse postponements. (In re Hyman, 2 N. B. R. 107; 3 Ben. 28; 36 How. Pr. 282; Fed. Cas. 6984.) He has no authority to decide questions arising from objections urged against the bankrupt's discharge. (In re Puffer, 2 N. B. R. 17; 15 Pittsb. Leg. J. 534; Fed. Cas. 11459.) He cannot admit or postpone a contested claim which he considers valid, but must report it to the court if the vote upon it could affect choice of assignee (In re Bartusch, 9 N. B. R. 478; Fed. Cas. 1086); nor entertain a motion on the part of the bankrupt to set aside the appointment of the assignee (In re Stokes, 1 N. B. R. 130; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 15475); nor make an order to show cause why proof of a debt against the estate of a bankrupt should not be vacated and the record thereof canceled. (Comstock v. Wheeler, 2 N. B. R. 171; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 3084.)

**Fees, payment of; register may order.**—Under the act of 1867 it was held that an order for the payment of fees and expenses in bankruptcy proceedings out of funds of estate is an order for distribution, and, when unopposed, may be made by register. (In re Lane, 2 N. B. R. 100; 3 Ben. 98; 1 Chi. Leg. News, 123; Fed. Cas. 8042.)

**Sec. 39. Duties of referees.**—*a*. Referees shall (1)<sup>1</sup> declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable; (2)<sup>2</sup> examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or

<sup>1</sup> The first dividend must be declared within thirty days after the adjudication, if the money of the estate is in excess of the amount necessary to pay the debts which have priority, and such claims as have not been but probably will be allowed equals five per centum or more of such allowed claims; and the subsequent dividends are to be declared on like terms as the first, and as often as the amount equals ten per cent. or more, and upon closing the estate. They may be declared oftener and in smaller proportions if the judge sees fit. (Sec. 65.) The trustees are required to pay dividends within ten days after they are declared by the referee. (Sec. 47—9.)

<sup>2</sup> Within ten days after an adjudication, in case of involuntary, and with the petition if voluntary, the bankrupt must file a schedule of his property in triplicate, one copy of which must be furnished the referee. (Sec. 7—8.)



defective to be amended; (3)<sup>1</sup> furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4)<sup>2</sup> give notices to creditors as herein provided; (5)<sup>3</sup> make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6)<sup>4</sup> prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7)<sup>5</sup> safely keep, per-

<sup>1</sup> The refusal of a referee to permit a reasonable opportunity for an inspection of the accounts, papers and records relating to estates of bankrupts in his charge by parties in interest, when directed by the court, renders him liable to a fine and the forfeiture of his office. (Sec. 29, c.)

<sup>2</sup> Referees are required to give creditors at least ten days' notice by mail, to their respective addresses, of all examinations of the bankrupt, hearings upon applications for confirmation of composition or discharges, meetings of creditors, proposed sales of property, declaration and time of payments of dividends, filing the final accounts of the trustee, time and place they will be examined and passed upon, proposed compromise of any controversies, and the proposed dismissal of the proceedings. (Sec. 58, a.) Before giving notices he may require of the person in whose behalf the duty is performed indemnity for such expense. (Orders X.) The referee is also required to notify trustees of their appointment. (Orders XVI. See, generally, Orders XXIII.)

<sup>3</sup> For the purpose of having any order made by a referee reviewed, there should be filed with him a petition therefor, setting out the error complained of, and the referee must forthwith certify the question presented to the judge. (Orders XXVII.) Courts of bankruptcy must consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees. (Sec. 2—10.)

<sup>4</sup> The schedule required to be filed by the bankrupt should be filed within ten days after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, and should show the amount and kind of property, the location thereof, its money value, etc. (Sec. 7—8.)

<sup>5</sup> The records in all proceedings in cases before a referee should be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States. The records of the proceedings should be kept in a separate book or books, and when the case is concluded before the referee it must be certified to by him,

fect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8)<sup>1</sup> transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9)<sup>2</sup> upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10)<sup>3</sup> whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

[Act of 1867. SEC. 4. . . . That every register in bankruptcy, so appointed and qualified, shall have power, and it shall be his duty, to make adjudication of bankruptcy, to receive the surrender of any bankrupt, to administer oaths in all proceedings before him, to hold and preside at meetings of creditors, to take proof of debts, to make all computations of dividends, and all orders of distribution, and to furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case, to audit and pass accounts of assignees, to grant protection, to pass the last examination of any bankrupt in case whenever the assignee or a creditor do not oppose, and to sit in chambers and despatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the dis-

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and, with such papers as are on file before him, be transmitted to the court of bankruptcy, and there remain a part of the records of the court. (Sec. 42.)

<sup>1</sup> Clerks are required to return papers which were received from the referees after they have served their purpose. (Sec. 51—3.)

<sup>2</sup> In the taking of evidence referees may administer oaths or affirmations. (Sec. 20.)

<sup>3</sup> Clerks are required to deliver to the referee, upon application, all papers which may be referred to them, or, if the office of the referee is not in the same city or town with the clerk, transmit such papers by mail. (Sec. 51—3.)

trict judge shall in any particular matter direct; and he shall also make short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute-book to be kept in his office, and any register of the court may act for any other register thereof. . . .

Sec. 6. . . . That any party shall during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge.

Sec. 27. . . . In case a dividend is ordered, the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.]

**Duties of referees.**—These are set forth in General Orders XII. They should keep an account of their expenses and make return of the same to the judge under oath on the first Tuesday in each month. (Orders XXVL)

The register's duty in countersigning checks is judicial and not ministerial in its character. (In re Clark, 9 N. B. R. 67; Fed. Cas. 2810.)

**Duties with reference to schedule.**—See DUTIES OF BANKRUPT, sec. 7, *ante*, p. 88.

**To give notice.**—See NOTICES, sec. 58, *post*. An assignee was not summoned, but appeared before the register in proceedings by the assignee. The court held that there was no ground of objection (In re Campbell, 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2848); and the register should see that the assignee gives the creditors notice of proceedings touching the auditing and settlement of the assignee's accounts, and distribution under them. (In re Bushey, 8 N. B. R. 167; 27 Leg. Int. 111; Fed. Cas. 2227.) When a bankrupt amends schedule so as to include additional creditor for a considerable amount, it is not necessary to notify the creditors already named in such schedules before the amendment can take place, if assignee had been chosen. (In re Carson, 5 N. B. R. 290; 5 Ben. 277; Fed. Cas. 2460.)

**To prepare records and certify, etc.**—A register to whom depositions for proof of debt have been transmitted by another register is not bound to file the same, if they do not appear to be in conformity with

the law. (In re Loder, 8 N. B. R. 162; 4 Ben. 125; Fed. Cas. 3456.) A register has the right to refuse to suspend examination until questions certified by him are decided (In re Tift, 17 N. B. R. 550; Fed. Cas. 14030); but he must report the testimony, if required (In re Koch, 1 N. B. R. 153; 1 Amer. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531; Fed. Cas. 7916); and only a party to the proceedings can take the opinion of the judge on a certificate of the register on a matter arising in the course of such proceedings (In re Fredenburg, 1 N. B. R. 34; 2 Ben. 133; Fed. Cas. 5075); and upon the examination of bankrupt, when it was offered to be shown that a certain debt was fraudulently contracted, and the matter certified to court, it was held that the register should report all testimony required. (In re Koch, 1 N. B. R. 153; 1 Amer. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531; Fed. Cas. 7916.) Where written objections are filed to a proof of debt with the register, he is required to certify the same to the court upon request of either party. (In re Clark et al., 6 N. B. R. 202; Fed. Cas. 2808.)

When a creditor objects to the postponement of his claim he should have the objection entered and the question certified at once. (In re Jackson et al., 14 N. B. R. 449; 7 Biss. 280; Fed. Cas. 7123.)

A court will not refuse to entertain a question as to charges of register, upon a certificate of the register, especially where no objection is made by the parties. (In re Sherwood, 1 N. B. R. 74; 25 Leg. Int. 76; 1 Amer. Law T. Rep. Bankr. 47; 6 Phila. 461; Fed. Cas. 12774.)

**Hypothetical questions.**—A question in order to be certified to the judge must arise in the course of proceedings before register and between parties having the right to raise it. (In re Wright, 1 N. B. R. 91; Fed. Cas. 18069.) But upon certification of a question to the court, it refused to pass upon the same, holding that it had not arisen "during the proceedings before the register," or "in the course of such proceedings" (In re Wright, 1 N. B. R. 91; Fed. Cas. 18069); and neither court nor register can be the adviser of assignees as to their acts. (In re Sturgeon, 1 N. B. R. 131; 2 Amer. Law T. Rep. Bankr. 7; Fed. Cas. 13564.) A judge may decline to answer questions certified by a register which are not "points arising in the course of the proceedings before the register." (In re Bray, 2 N. B. R. 53; 1 Chi. Leg. News, 30; Fed. Cas. 1818.)

**Generally.**—It is the duty of a register to exercise a sound discretion in regard to estates in bankruptcy, that all insurable property shall be insured and cared for in every respect. (In re Carow, 4 N. B. R. 178; 41 How. Pr. 112; Fed. Cas. 2426.)

*b.* Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

[Act of 1867. SEC. 3. . . . That he will not, during his continuance in office, be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy, in either the district or circuit court in his district.

SEC. 4. . . . No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in an appeal therefrom, nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy, nor be interested in the fees or emoluments arising from either of said trusts.]

A person violating these provisions is liable to a fine of \$500 and a forfeiture of his office. (Sec. 29, c.)

**Sec. 40. Compensation of referees.—a.** Referees shall receive as full compensation for their services, payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

[Act of 1867. SEC. 4. . . . The fee of said registers, as established by this act, and by the general rules and orders required to be framed under it, shall be paid to them by the parties for whom the services may be rendered in the course of proceedings authorized by this act.

SEC. 5. . . . That the judge of the district court may direct a register to attend at any place within the district for the purpose of hearing such voluntary applications under this act as may not be opposed, of attending any meeting of creditors, or receiving any proofs of debts, and, generally, for the prosecution of any bankruptcy or other proceedings under this act; and the travelling and incidental expenses of such register, and of any clerk or other officer attending him, incurred in so acting, shall be set[lled] by said court in accordance with the rules prescribed under the tenth section

of this act, and paid out of the assets of the estate in respect of which such register has so acted; or if there be no such assets, or if the assets shall be insufficient, then such expenses shall form a part of the costs in the case or cases in which the register shall have acted in such journey, to be apportioned by the judge.

SEC. 47. . . . That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the registers. (Here follows an enumeration of the fees.) . . .

Such fees shall have priority of payment over all other claims out of the estate, and, before a warrant issues, the petitioner shall deposit with the senior register of the court, or with the clerk, to be delivered to the register, fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued, shall pay the same, and the court may issue an execution against him to compel payment to the register.]

When the bankrupt is unable to pay this fee, he may, nevertheless, file his petition, provided it is accompanied by an affidavit setting forth the fact that he has not and cannot obtain the money with which to pay such fees. (Sec. 51.) No provision is made in the act for the payment of compensation or expenses necessary to be incurred, where the bankrupt leaves no estate out of which the same may be paid; though by Orders XXXV (4), at any time during the pendency of the proceedings, the judge may order those fees to be paid out of the estate, or if the bankrupt has or can obtain the money with which to pay the fees, order him to do so, and, in default, dismiss the petition. Orders XXXV of the Supreme Court has reference to the compensation and expenses of referees.

**Compensation of referees.**—Under the act of 1867 it was held that a register was entitled to the percentage usually paid the assignees for the custody of goods and the proceeds thereof, which have been surrendered to him and sold under his direction pending the appointment of assignee. (In *re Loder et al.*, 2 N. B. R. 163; 3 Ben. 211; 2 Amer. Law T. 106; 1 Amer. Law T. Rep. Bankr. 159; Fed. Cas. 8455.) For his fees a register has a lien on the fund in court (In *re Breck et al.*, 13 N. B. R. 216; Fed. Cas. 1823); and questions as to charges of a register may be raised by an exception, or may be certified by the register. (In *re Sherwood*, 1 N. B. R. 74; 25 Leg. Int. 76; 1 Amer. Law T. Rep. Bankr. 47; 6 Phil. 461; Fed. Cas. 12774.)

b. Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

The judge may, at any time, for the convenience of parties or for cause, transfer case from one referee to another. (Sec. 22, b.)

c. In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

**Sec. 41. Contempts before referees.**—*a.* A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process, or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

[Act of 1867. SEC. 7. *And be it further enacted*, That parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena, and all persons wilfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury. If any person examined before a register shall refuse or decline to answer, or to swear to or to sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order

the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question or to sign such examination, and such person shall also be liable to be punished for contempt.

Sec. 26. . . . The bankrupt shall at all times, until his discharge, be subject to the order of the court . . . and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of the court.]

The referee cannot punish for contempt, but when committed in proceedings pending before him, he may certify the facts to the judge, who is authorized to impose like punishment as for similar offenses committed before a court of bankruptcy. (Sec. 2—16.)

A witness is entitled under United States Revised Statutes, section 848 for each day's attendance in court, or before any officer pursuant to law, to one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. By the act of August 3, 1893 (1 Supp. Rev. Stat. 165), witnesses in courts in Wyoming, Montana, Washington, Oregon, California, Nevada, Idaho, Colorado, New Mexico, Arizona and Utah are entitled to receive fifteen cents for each mile necessarily traveled over any stage line or by private conveyance, and five cents for each mile over any railroad in going to and returning from said court. But no officer of a United States court is entitled to witness fees for attending before any court or commissioner where he is officiating. (U. S. Rev. Stat., sec. 849.)

**Contempts before referees.**—A register ordered a bankrupt to turn over certain moneys in his hands, and upon failing to do so he was held guilty of contempt. (In re Speyer, 6 N. B. R. 255; 42 How. Pr. 397; Fed. Cas. 13239.) And it is contempt for an involuntary bankrupt to neglect to pay to the assignee a sum in his inventory as "cash on hand." (In re Dresser, 3 N. B. R. 138; Fed. Cas. 4077.) For the hearing in opposition to discharge, a witness in New York was summoned to attend at Brooklyn. He failed to appear, and an application to attach him was made. It was held that the witness should attend. (In re Woodward, 12 N. B. R. 297; 8 Ben. 112; 1 N. Y. Wkly. Dig. 33; 7 Chi. Leg. News, 287.)

A witness who purchased claims against a bankrupt, being examined as to where he obtained the money therefor, and having answered on cross-examination that it did not come from the bankrupt, was bound, on pain of contempt, to state where he did obtain it. (In re Lathrop et al., 4 N. B. R. 93; Fed. Cas. 8106.)

See EVIDENCE, sec. 21, *ante*.

**Not contempt of court.**—Where a witness has been summoned to be examined before a register and did not so appear, but filed objections declining to submit to examination until the question raised had been



decided, the register held his declining to be a witness, after raising the objections and filing the papers relating to same, was not a contempt of court (In re Dole, 7 N. B. R. 538; Fed. Cas. 8965); and where the bankrupt, owing to sickness, was unable to attend as required by the register, he was not in contempt (In re Carpenter, 1 N. B. R. 51; Fed. Cas. 2427); nor was one who replied to an order for examination that before the order was issued he had been discharged. (In re Jones, 6 N. B. R. 886; Fed. Cas. 7449.)

b. The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

[Act of 1867. SEC. 4. . . . *Provided, however,* That nothing in this section contained shall empower a register to commit for contempt, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge.]

See also note to sec. 41, a. *ante*.

The register cannot make any binding decisions, or compel a witness to answer, if he refuses. (In re Koch, 1 N. B. R. 153; 1 Amer. Law T. Rep. Bankr. 121; 15 Pittsb. Leg. J. 531; Fed. Cas. 7916.) A creditor can, under refusal of a bankrupt to answer, apply to the district judge to punish the party as for contempt of court. (In re Rosenfield, 1 N. B. R. 60; 15 Pittsb. Leg. J. 245; 1 Amer. Law T. Rep. Bankr. 47; Fed. Cas. 12059.)

**Sec. 42. Records of referees.—a.** The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

[Act of 1867. SEC. 4. . . . and he shall also make a short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward

to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute book to be kept in his office. . . .]

A certified copy of the proceedings before a referee, or of papers when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district court of the United States are now or may hereafter be admitted as evidence. (Sec. 21, *d.*)

**Records of referees, how kept.**—A motion was made for order confirming composition, but opposing creditors offered affidavits to show that he omitted to record objections and other proceedings and misstated what took place. It was held that the register's report must be taken to be a true report of the proceedings (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13329); and the instrument made by a judge of a court of bankruptcy, or by the register, is the best evidence of the fact of bankruptcy. (Buck v. Winters, Ass., 15 N. B. R. 140.)

*b.* A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

In pursuance of this section more than one case should not be put in a single book, but each case must be put in a separate book or books, so that, when the particular case is completed, the papers and record in entirety may be certified to the clerk of court for filing.

To prove what proceedings have taken place before him, the entries of a register may be used. As to the number of days that a witness was in attendance before a register, the certificate of the clerk is *prima facie* evidence. (In re Crane & Co., 15 N. B. R. 120; 1 Tex. Law J. 41; Fed. Cas. 3352.)

*c.* The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

[Act of 1867. SEC. 5. . . . *Provided, always,* That all depositions of persons and witnesses taken before said register, and all acts done by him, shall be reduced to writing, and be signed by him, and shall be filed in the clerk's office as a part of the proceedings. . . .]

SEC. 38. . . . the proceedings in all cases of bankruptcy shall be deemed matters of record, but the same shall

not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection.]

Papers which have been exhibited to the court become a part of the depositions, and cannot be withdrawn and a copy substituted therefor, except upon the application of a party who can show a proper use. (In re McNair, 2 N. B. R. 109; Fed. Cas. 8908.)

**Sec. 43. Referee's absence or disability.**—*a.* Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

[Act of 1867. SEC. 5. . . . Such register shall be subject to removal by the judge of the district court, and all vacancies occurring by such removal, or by resignation, change of residence, death or disability, shall be promptly filled by other fit persons, unless said court shall deem the continuance of the particular office unnecessary.]

The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another (sec. 22, b), and when so transferred the judge determines the proportion in which the fee and commissions are to be divided (sec. 40, b), or, in case the reference of a case is revoked, he determines what part of the fee and commissions shall be paid to the referee. (Sec. 40, c.)

**Sec. 44. Appointment of trustees.**—*a.* The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

[Act of 1867. SEC. 13. *And be it further enacted,* That the creditors shall, at the first meeting held after due notice from the messenger, in presence of a register designated by the

court, choose one or more assignees of the estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debt. If no choice is made by the creditors at said meeting, the judge, or if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election.

SEC. 18. . . . vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or at his discretion by an election by the creditors, in the manner hereinbefore provided, at a regular meeting, etc.]

The direct and responsible representative of the bankrupt is the trustee (termed "assignee" in the prior law), in whom is vested the title of the estate (sec. 70), and who is charged with its care. (Sec. 47.) Under this section there must be one or three trustees, and in the event the latter number is appointed, the concurrence of at least two is necessary to the validity of their every act concerning the administration of the estate. (Sec. 47, b.)

The first meeting of the creditors at which the trustee must be appointed should be held not less than ten days nor more than thirty days after the adjudication in bankruptcy. (Sec. 55, a.) Pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, courts of bankruptcy must appoint the trustees, and, upon complaint of creditors, remove trustees for cause upon hearings and after notice. (Sec. 2—17.) It is the duty of the referee to notify the trustee of his appointment. (Orders XVI.)

The rules of the Supreme Court provide that no official trustee shall be appointed by the court, nor any general trustee to act in classes of cases (Orders XIV), and also that the appointment of a trustee by creditors shall be subject to the approval or disapproval of the referee or judge. (Orders XIII.) If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, no trustee need be appointed. (Orders XV.)

**Who may not vote for trustee.**—Creditors inhibited from proving their debts will be excluded from voting for assignee (In re Stevens, 4 N. B. R. 122; 4 Ben. 513; Fed. Cas. 13391); and a secured creditor who sold his lien, bid it in himself, and proved his claim for the difference between the face and the amount bid at the sale, and then voted for assignee, had no right to vote. (In re Hunt, 17 N. B. R. 205; 35 Leg. Int. 71; Fed. Cas. 6881.)

**Who may vote.**—When, at first meeting of creditors, but one proves his debt, he has the right to choose the assignee (In re Haynes, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 6269); and creditors of the firm only can participate in the election of assignees for copartners. (In re Scheiffer et al., 2 N. B. R. 179; 1 Chi. Leg. News, 261; Fed. Cas. 12445.)

**Right to vote—Coercion.**—The assignee is the agent, attorney and representative of the creditors. The creditors have no power to act except to vote on assignee and on dividends (In re Campbell et al., 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2343); and as a rule, the register should demand the same proof, before admitting vote for assignee, as is requisite in a trial. Exceptional cases, if free from suspicion, might authorize a deviation (In re Northern Iron Co., 14 N. B. R. 356; Fed. Cas. 10322); and the court will not set aside an election of assignee on account of any irregularity in a claim, when its exclusion would not affect result (In re Jackson et al., 14 N. B. R. 449; 7 Biss. 280; Fed. Cas. 7128); but an election persuaded by importunity of the proposed assignee exercised upon creditors will not be approved (In re ———, a Bankrupt, 2 N. B. R. 100); and any attempt of a register to influence the choice of an assignee is improper. (In re Smith, 1 N. B. R. 25; 2 Ben. 113; Fed. Cas. 12971.) Where a person, to secure his election as assignee, agreed with two of his creditors that he would pay their claims in full if they would give him their powers of attorney, the court disregarded his election. (In re Haas, 8 N. B. R. 189; Fed. Cas. 5884.)

Where creditors adopt a resolution appointing trustees, the confirmation of which is contested, the persons desiring the confirmation are moving parties and should file such papers as they see fit in support of motion. (In re American Waterproof Cloth Co., 8 N. B. R. 74; 1 Ben. 526; Fed. Cas. 818.)

**First meeting of creditors.**—The right of creditors to choose assignees at first meeting cannot be denied, but after assignee has been appointed he may, at a subsequent meeting, be removed and trustees appointed (In re Jones, 2 N. B. R. 20; Fed. Cas. 7447), and the vote for assignee should be taken at the earliest moment; and it was held that if proofs of claims are postponed by the register, such creditors are not entitled to vote. They may, however, have the proceedings certified to the court, and if erroneous the court will set aside and refer the matter back for a new vote, unless it appear the vote of the complaining creditor would not change the result (In re Lake Superior Ship Canal, Railroad and Iron Co., 7 N. B. R. 376; Fed. Cas. 7997); but where an adjudication has been made and a warrant has issued for the first meeting, and said petition is still pending without any discontinuance, and the bankrupt files a second petition in which the same debts are named, the choice of an assignee will not be made in the second proceeding. (In re Wielarske, 4 N. B. R. 130; 4 Ben. 468; Fed. Cas. 17619.)

**Additional assignees.**—An additional assignee may be appointed upon petition to the court showing sufficient reasons (In re Overton, 5 N. B. R.

366; Fed. Cas. 10625); and a resolution of creditors of the bankrupt committing his estate to a trustee and nominating a committee of two members, one of whom is the trustee, to supervise, will not be approved. (In re Stillwell, 2 N. B. R. 164; Fed. Cas. 13447.) The attorney for the creditors may be chosen assignee by the creditors if not otherwise objectionable. (In re Clairmont, 1 N. B. R. 42; 1 Lowell, 230; Fed. Cas. 2781; In re Lawson, 2 N. B. R. 44; Fed. Cas. 8150.) Assignees in bankruptcy are public officers whose appointment under the act of 1867 was required to be approved by the judge of the district court. (Morris et al. v. Swartz, 10 N. B. R. 305.)

**Sec. 45. Qualifications of trustees.**—*a*. Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

[Act of 1867. SEC. 18. . . . No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee. . . .]

It would appear from this that the trustee need not reside or have his office in the bankruptcy district, provided it is within the judicial district of which his bankruptcy district is a part, which provision also applies to the office of a corporation. It is essential, however, that there should be a residence or some office in the judicial district for which appointed.

**Qualifications of trustee.**—An assignee must reside in the district in which the proceedings are being carried on (In re Havens, 1 N. B. R. 126; Fed. Cas. 6231); and it has been held that a person residing without, but having fixed place of business within, the jurisdiction of the bankruptcy court, may be appointed an assignee. (In re Loder, 2 N. B. R. 161; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 8459.)

**Kinship.**—The mere fact of relationship on the part of a proposed trustee to the bankrupt or to a creditor cannot be regarded as a disqualification (In re Zinn et al., 4 N. B. R. 145; 43 How. Pr. 64; 4 Ben. 500; Fed. Cas. 18215); but it has been held that a relative of a bankrupt is ineligible as assignee (In re Powell, 2 N. B. R. 17; Fed. Cas. 11354; In re Zinn et al., 4 N. B. R. 123; 40 How. Pr. 461; Fed. Cas. 18216); also that a son of one of a bankrupt firm, who, together with other members of bankrupt's family, presented claims against the estate, is not a proper person. (In re Bogert et al., 3 N. B. R. 161; Fed. Cas. 1600.)

The same person cannot at the same time be receiver under the state law and assignee appointed by the bankrupt court (In re Stuyvesant Bank, 6 N. B. R. 272; 5 Ben. 566; Fed. Cas. 13581); but an attorney for creditors may be appointed assignee of bankrupt's estate. (In re Barrett, 2 N. B. R. 165; 2 Hughes, 44; 1 Chi. Leg. News, 202; 2 Amer. Law T. Rep. 182; 11 Int. Rev. Rec. 21; 1 Amer. Law T. Rep. Bankr. 144; Fed. Cas. 1043; In re Clairmont, 1 N. B. R. 42; 1 Lowell, 230; 1 Amer. Law T. Rep. Bankr. 6; Fed. Cas. 2781.) A director of a bank for the benefit of which the bankrupt had confessed judgment should not be chosen (In re Powell, 2 N. B. R. 17; Fed. Cas. 11354); and the election of one as assignee who was for years the bankrupt's bookkeeper, and who voted under powers of attorney from different creditors, has been set aside. (In re Wetmore et al., 16 N. B. R. 514; Fed. Cas. 17466.)

**Sec. 46. Death or removal of trustees.—a.** The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

[Act of 1867. Sec. 14. . . . and no suit in which the assignee is a party shall be abated by his death or removal from office; but the same may be prosecuted and defended by his successor, or by the surviving or remaining assignee, as the case may be.

Sec. 15. . . . No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving or remaining or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him.

Sec. 18. . . . That the court, after due notice and hearing, may remove an assignee for any cause which, in the judgment of the court, renders such removal necessary or expedient. At a meeting called by order of the court in its discretion for the purpose, or which shall be called upon the application of a majority of the creditors in number and value, the creditors may, with consent of [the] court, remove any assignee by such a vote as is hereinbefore provided for the choice of assignee. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom. Vacancies caused by death or otherwise in the office

of assignee may be filled by appointment of the court, or at its discretion by an election by the creditors, in the manner hereinbefore provided, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person, as the court shall direct. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were originally chosen. Any former assignee, his executors or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate.

SEC. 13. . . . If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.]

Upon the complaint of creditors courts of bankruptcy will remove trustees for cause, after due notice and hearing. (Sec. 2—17.) His refusal to permit a reasonable opportunity for the inspection of the accounts, papers and records of estates in his charge by the parties in interest, when directed by the court so to do, makes him liable to punishment and a forfeiture of his office. (Sec. 29, *c*.) As to whether, in the case of the death of one of three trustees, another must be appointed to take his place, *quære*. (Sec. 47, *b*.) The statute is silent as to permitting a trustee to resign. After accepting the office it appears that he must serve until removed by the court (sec. 2—17), and such removal can only be made by the judge. (Orders XIII.)

**Death or removal of trustee.**—A motion to set aside the appointment of the assignee can be entertained by the district judge and not by the register. (In re Stokes, 1 N. B. R. 130; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 12474.)

**For neglect or fraud.**—Upon a creditor's petition for removal of assignee it was held that assignee who had neglected to secure bankrupt's



property and had shown gross neglect should be removed (In re Morse, 7 N. B. R. 56; Fed. Cas. 9852); and one who is charged with mismanagement and whose removal is asked will be removed, but he will be protected against costs where it appears that he acted in good faith (In re Mallory, 4 N. B. R. 88; Fed. Cas. 8990); and where an assignee fails to deposit funds in his hands, suffers foreclosure of a mortgage and neglects to purchase it at less than its face, and where he is guilty of mismanagement of the funds of the estate, he will be ordered to show cause why he should not be removed (In re Price, 4 N. B. R. 187; Fed. Cas. 11409; In re Sacchi, 6 N. B. R. 398; 43 How. Pr. 252; Fed. Cas. 12200; In re Blodgett et al., 5 N. B. R. 472; Fed. Cas. 1552); and an assignee who has a deposit with a bank which bought up claims against his estate at a discount to set off against such deposit, who has knowledge of the facts and does not disclose them to other creditors, nor dispute such claims for set-off, should be removed. (In re Perkins, 8 N. B. R. 56; Fed. Cas. 10982.)

**Soliciting appointment.**—Assignee offered creditors to pay their claims in consideration of giving him power to vote for them at election of assignee. It was held that the election should be disregarded. (In re Haas et al., 8 N. B. R. 189; Fed. Cas. 5884.) But creditors having knowledge of an assignee soliciting his own election and permitting him to qualify and act for months, without objection, are too late in asking his removal on that ground. (In re Mallory, 4 N. B. R. 88; Fed. Cas. 8990.)

**When not removable.**—An assignee chosen by the greater part in number and value of the creditors is assignee by virtue of the law, and the court will not remove him in the absence of imputation, either upon his capacity or integrity (In re Grant, 2 N. B. R. 35; Fed. Cas. 5692); and where it appeared that a majority of creditors in number and value had voted to remove assignee, but that the creditors were few, and several voting for removal were parties to mortgages and transactions which the assignee was seeking to impeach, that the movement was made on behalf of such parties, and no money remained in the hands of the assignee, and nothing remained to be done excepting to settle those disputes, the court refused to remove the assignee. (In re Dewey, 4 N. B. R. 189; Fed. Cas. 3849.)

The court will not set aside election of assignee on account of any irregularity in admitting a claim when its exclusion would not affect the result. (In re Jackson et al., 14 N. B. R. 449; 7 Biss. 280; Fed. Cas. 7123; R. S. 5034, 5078, 5083.)

**Proceedings against trustee.**—A trustee can only be called to account by petition to the court, setting forth the grounds. (In re Hicks et al., 19 N. B. R. 449; Fed. Cas. 6457.)

**Sec. 47. Duties of trustees.**—*a.* Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such

estates; (2)<sup>1</sup> collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3)<sup>2</sup> deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5)<sup>3</sup> furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9)<sup>4</sup> pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11)<sup>5</sup> set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

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<sup>1</sup> Courts of bankruptcy are authorized to bring in and substitute additional persons or parties in proceedings in bankruptcy, when necessary for the complete determination of a matter in controversy. (Sec. 2—6.)

<sup>2</sup> Banking institutions are to be designated by order of court as depositories for the money of bankrupt estates. (Sec. 61.)

<sup>3</sup> A refusal by the trustee to permit a reasonable opportunity to inspect the accounts, papers and records relating to estates in his charge renders him liable to fine and a forfeiture of his office. (Sec. 29, c.)

<sup>4</sup> Referees are required to declare dividends and prepare and deliver to the trustee dividend sheets showing the dividends declared and to whom payable (sec. 39, a), and to give at least ten days' notice of the declaration and time of payments of such dividends. (Sec. 58, a.)

<sup>5</sup> The bankrupt should file with his schedule a claim for such exemptions as he may be entitled to. (Sec. 7, a.) This law in no wise affects

[Act of 1867. SEC. 14. . . . The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien or other encumbrances. The assignee shall immediately give notice of his appointment, by publication at least once a week for three successive weeks in such newspapers as shall for that purpose be designated by the court, due regard being had to their circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts.

SEC. 15. . . . That the assignee shall demand and receive, from any and all persons holding the same, all the estate assigned, or intended to be assigned, under the provisions of this act; and he shall sell all such unencumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale as will, in its opinion, prove to the interest of the creditors; and the assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort. . . .

SEC. 16. . . . That the assignee shall have the like remedy to recover all said estate, debts and effects in his own name, as the debtor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. . . .

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the allowances to bankrupts of exemptions which are prescribed by the state laws in force at the time of filing the petition in the state wherein they have had their domicile for the six months, or the greater portion thereof, immediately preceding the filing of the petition. (Sec. 6.) If the bankrupt has an insurance policy which has a cash surrender value, payable to himself or his estate, he may pay or secure the cash surrender value to the trustee, and continue to hold and own such policy free from the claims of creditors. (Sec. 70, a.)

SEC. 17. . . . That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge or a register of said court, or may authorize the same to be deposited in any convenient bank upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon. He shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the court.

SEC. 28. . . . If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under direction of the court, sell and assign such debts or other property in such manner as the court shall order.]

The duties of trustees are set forth at length in General Orders XVII.

**Collection of assets, etc.**—In an action brought by assignee in bankruptcy to foreclose, a state court has jurisdiction (*Burlingame, Ass., etc. v. Parce et al.*, 17 N. B. R. 246); and in bringing an action to collect a debt he may select the forum, and a state court would have jurisdiction. (*Russell, Ass., etc. v. Owen*, 15 N. B. R. 322.) He may prosecute suits to recover assets of a bankrupt in a district other than that in which the decree in bankruptcy is entered. (*Dutcher v. Wright, Ass.*, 16 N. B. R. 331; 94 U. S. 553.) Where an attorney agreed with assignee to conduct a suit on contingent fee, and retained the fee agreed upon, upon motion to require the attorney to pay over a portion of the money retained, it was held that the bankrupt court had power to determine the amount of attorney's fee and to order the attorney to pay over balance of moneys retained by him. (*In re Brinker et al.*, 19 N. B. R. 195; Fed. Cas. 1882.) An assignee obtained authority to employ counsel to prosecute a claim on a contingent contract, but suppressed facts which, if known to the court, would have prevented the giving of authority. It was held that the contract could be set aside, but a reasonable compensation should

be paid counsel for services. (*Maybin v. Raymond, Ass.*, 15 N. B. R. 353; 4 Amer. Law T. Rep. (N. S.) 21; Fed. Cas. 9338.) Where it appears that a bankrupt's wife has property which it is not shown she received from third parties, and where the bankrupt carries on business as the agent of his wife, he will be required to pay over to the assignee a deficit in his assets (*In re Peltasohn et al.*, 16 N. B. R. 265; 4 Dill. 107; 10 Chi. Leg. News, 9; Fed. Cas. 10912); and for the purpose of sustaining an action to set aside a transfer of property as fraudulent against creditors, an assignee is deemed to represent the creditors, and may impeach the transfer notwithstanding it may be held valid against the bankrupt. (*Allen v. Massey*, 4 N. B. R. 75; 2 Chi. Leg. News, 309; Fed. Cas. 231; *Thurmond v. Andrews and Wife*, 18 N. B. R. 157.)

It is the duty of the assignee to recover from general assignees any assets which the creditors could have recovered. (*Aiken v. Edrington et al.*, 15 N. B. R. 271; Fed. Cas. 111.)

A creditor, upon refusal of assignee, brought an action in his own name against the assignee, bankrupt, and others to reach property fraudulently concealed by the bankrupt. It was held that the remedy was by petition to compel the assignee to act. (*Glenny v. Langdon*, 19 N. B. R. 24; 98 U. S. 20.)

See ACTIONS BY TRUSTEES, *ante*, p. 110.

**Assets of corporations.**—Stockholders in an insurance company had paid in twenty per cent. and given notes for balance. Thirty-five per cent. remained unpaid at the time the company became bankrupt. The defendants purchased policies, procured adjustment by the company, taking certificates of loss for the amounts, which certificates they surrendered to the treasurer at par in payment of their stock-notes. Suit being brought by assignee, judgment was accorded him. (*Jenkins, Ass., v. Armour et al.*, 14 N. B. R. 276; 6 Biss. 312; 8 Chi. Leg. News, 267; 23 Int. Rev. Rec. 169; Fed. Cas. 7260.) A purchaser of stock, which is only transferable on the books of the company, is liable for assessment levied by the assignee of the company, although such transfer had not been made. The provision requiring the transfers to be upon the books is for the benefit of the company and it can waive it (*Upton v. Burnham*, 8 N. B. R. 22; 8 Biss. 431; Fed. Cas. 16798); and where a court in which a corporation was declared bankrupt directed an assessment on the unpaid stock of said bankrupt, it was held that such assessment was conclusive. (*Michener v. Payson, Ass.*, 13 N. B. R. 49; 1 N. Y. Wkly. Dig. 272; 2 Wkly. Notes Cas. 339; 8 Chi. Leg. News, 17; 23 Pittsb. Leg. J. 88; Fed. Cas. 9524.) The assignee has all the authority of a receiver to collect demands, and under the order of the court an assessment may be made on unpaid shares. (*Myers, Ass., v. Seeley et al.*, 10 N. B. R. 411; 1 Cent. Law J. 451; Fed. Cas. 9994.) The assignee brought suit on a premium note. The defendant set up that the note was taken by the company in Indiana and that the company had not complied with the laws of that state respecting foreign

corporations. It was held that the defense was sufficient. (*Lamb, Ass., v. Lamb*, 13 N. B. R. 17; 6 Biss. 420; 7 Chi. Leg. News, 411; 21 Int. Rev. Rec. 817; 1 N. Y. Wkly. Dig. 318; Fed. Cas. 8018.)

**Shall collect, etc., generally.**—An assignee who redeems pledges is subrogated to the rights of the pledgee until, from the proceeds of the pledges, the fund is made good. (*McLean et al. v. Cadwalader*, 15 N. B. R. 383.) An assignee cannot maintain trover where conversion was consummated before he had a right to possession. (*Jones v. Miller, Ass.*, 17 N. B. R. 316; 1 N. J. 113; Fed. Cas. 7482.) Property held in trust by a bankrupt does not pass to assignee, but if his trust be coupled with an interest the assignee is vested with such interest. (*Walker, Ass., v. Seigel et al.*, 12 N. B. R. 394; 2 Cent. Law J. 508; Fed. Cas. 17085.) The title of an assignee who was before assignee under a deed of assignment relates back to execution of the deed; and all his acts after he received the assets, not inconsistent with his duty as assignee in bankruptcy, will be approved (*In re Walker*, 18 N. B. R. 56; Fed. Cas. 17063); also where an assignee filed a petition in respect to property in which he was not interested, he was obliged to pay the costs himself. (*In re Preston*, 6 N. B. R. 545; Fed. Cas. 11394.)

**Closing of estates, mortgages.**—An assignee who desires to test the validity of a mortgage should proceed in equity (*In re New York Kerosene Oil Co.*, 3 N. B. R. 31; Fed. Cas. 10206); and it is his duty to contest the validity of a mortgage by which one creditor has obtained a preference over the others. (*In re Metzger*, 2 N. B. R. 114; 1 Chi. Leg. News, 163; 2 Amer. Law T. Rep. Bankr. 53; Fed. Cas. 9510.) The defense of usury can be pleaded by the assignee so long as any part of the debt for which usury was paid, or agreed to be paid, remains unpaid. (*In re Prescott*, 9 N. B. R. 385; 5 Biss. 523; 6 Chi. Leg. News, 151; Fed. Cas. 11389.) Unless it be for the benefit of the estate to discharge a mortgage, or to sell the property subject to the mortgage, so as to realize a sum of money free from the mortgage, it is unnecessary for the assignee to take any proceedings. (*In re Lambert*, 2 N. B. R. 138; 1 Chi. Leg. News, 210; Fed. Cas. 8026.)

**Leases.**—Without an order of court, and without ascertaining whether the assets are sufficient to discharge the expenses of administration, the assignee cannot pay a claim for occupation of premises (*In re Hoagland*, 18 N. B. R. 530; Fed. Cas. 6545); and until an assignee accepts a lease he does not become liable for rent accruing after adjudication. (*In re Ten Eyck et al.*, 7 N. B. R. 26; Fed. Cas. 13829.) A bankrupt tenant's liability for rent ceases on the day of adjudication, and where the assignee occupies the premises after that time he is responsible; but if the occupation is for the benefit of the estate he will be allowed credit for the amount so paid out. (*In re Webb & Co.*, 6 N. B. R. 302; Fed. Cas. 17315.) An assignee, unless restrained by the terms of the lease, may adopt or reject a lease, as he finds most beneficial for the creditors, and can take

a reasonable time for decision (In re Laurie et al., 4 N. B. R. 7); but unless it will benefit the creditors, an assignee is not bound to take leasehold estate belonging to bankrupt. (White v. Griffing, 18 N. B. R. 899.) The assignee, if not in funds from the estate to a sufficient extent to defray the expenses for the execution of his trust, may require that funds for that purpose shall be advanced to him before he proceeds. (In re Hughes, 1 N. B. R. 9; 1 Amer. Law T. Rep. Bankr. 45; Fed. Cas. 6841.)

**Lien.**—The assignee may, if to the interest of the estate, discharge the incumbrance, or he may agree with the creditors as to value of the property, or it may be ascertained by sale under direction of court, when the creditor shall prove only for the balance, if any (Reed v. Bullington, 11 N. B. R. 408); but after the filing of petition no lien can be acquired upon the property of the bankrupt by proceedings in the state court; and an assignee is not bound to go into a state court to defend such a suit (Stuart v. Hines, 6 N. B. R. 418); and where, under an agreement of the execution creditor, the property levied on passes into the possession of the assignee without prejudice to such prior lien, the assignee and the register should, if the execution creditor asks it, expedite the proceedings for decision. (In re Hafer et al., 1 N. B. R. 163; 6 Phila. 474; 25 Leg. Int. 164; Fed. Cas. 5897.)

**Fraud or mistake.**—Where an assignee applies to the court for directions, and a reference is ordered to obtain information, and the assignee fails to attend, but acts independently, he will be held to the strictest account. (In re Schapter, 9 N. B. R. 824; Fed. Cas. 12438.) An assignee, directed by the court to sell certain goods, received an offer which was higher than one for which he had promised to sell. He refused to entertain this higher price. It was held that he should have rejected first when higher price was offered (In re Ryan & Griffin, 6 N. B. R. 235; Fed. Cas. 12182); and if an assignee knows or believes that a creditor has fraudulently proved a debt, and refuses to contest it, any creditor who has proved his debt may obtain the annulment of such fraudulent proof (First Nat. Bank of Troy v. Cooper et al., 9 N. B. R. 529; 20 Wall. 171); also an assignee cannot attack the trust he assumed to execute and defend. (Johnson, Ass. v. Rogers et al., 15 N. B. R. 1; 5 Amer. Law Rec. 536; 14 Alb. Law J. 427; Fed. Cas. 7408.)

**Closing up estate generally.**—The assignee of a bankrupt who has received pay for an article is estopped to deny that an article of the kind contracted for, in the possession of the bankrupt, is the one paid for (Ex parte Rockford, Rock Island & St. Louis R. R. Co., 3 N. B. R. 12; 1 Lowell, 845; 2 Amer. Law T. 105; 1 Chi. Leg. News, 337; 1 Amer. Law T. Rep. Bankr. 133; Fed. Cas. 11978); but where the trustee has proved claim for a note against the estate of the payee, and where the holder has not, on the faith thereof, changed his position in regard to the note, the trustee is not estopped from disputing the claim. (In re Dodge et al., 17 N. B. R. 504; 9 Ben. 480; Fed. Cas. 3948.) A provision in a deed

empowering the *cestui que trust* to appoint new trustee upon the failure of original trustee to act does not authorize the assignee of the *cestui que trust* to appoint a new trustee. (Clark et al. v. Wilson et al., 16 N. B. R. 356.)

**Shall furnish information.**—An assignee having failed to give a certificate containing the names and residences of creditors who have proved their claims, in order that the bankrupt might move for discharge, application was made to the register to compel the assignee to perform this duty. It was held that register can compel assignee to sign said certificate. (In re Blaisdell, 6 N. B. R. 78; 5 Ben. 420; 42 How. Pr. 274; Fed. Cas. 1488.)

**Shall make to creditors detailed statement of administration.**—Application was made for relief from action of trustee in allowing counsel fees alleged to be excessive. It was held that such matter was within the discretion of trustee, and in absence of bad faith he would not be interfered with. (In re Baxter et al., 19 N. B. R. 295; Fed. Cas. 1122.)

**Shall make final report and account.**—On certificate from register it was held that trustee can be called to account by petition to court setting forth grounds (In re Hicks et al., 19 N. B. R. 449; Fed. Cas. 6457); but on petition to court to pass on items of assignee's account, reported favorably by the register on reference by court, it was held that it would not, but that a meeting of creditors must be called to act thereon (In re Hubbel et al., 9 N. B. R. 523; 19 Int. Rev. Rec. 150; Fed. Cas. 6820); and creditors are not bound to object to assignee's account save at a meeting called pursuant to the provisions of the act. (In re Clark, 9 N. B. R. 67; Fed. Cas. 2810.) A creditor has a right to call for investigation into the conduct of the assignee in selling bankrupt's property, even after the latter's account has been approved. (In re Peabody, 16 N. B. R. 243; 9 Chi. Leg. News. 243; Fed. Cas. 10866.)

**Shall pay dividends.**—It was held, under the act of 1867, that money in the hands of assignee after payment of creditors who have proven their claims must be distributed among such creditors as are named in the bankrupt's list, although they have failed to make proof of claims (In re James, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 7175); for an assignee is an agent, standing in the shoes of the bankrupt, with power to do what the bankrupt ought to have done, namely, pay the debts out of assets. (Starkweather v. Cleveland Ins. Co., 4 N. B. R. 110; 3 Chi. Leg. News, 77; 28 Leg. Int. 36; 10 Amer. Law Reg. (N. S.) 333; 5 Amer. Law Rev. 578; Fed. Cas. 13308.) The distribution of the assets of a bankrupt cannot be interfered with by garnishment or process of state court. (In re Bridgman, 2 N. B. R. 84; 1 Chi. Leg. News, 103; Fed. Cas. 1867.)

See also DECLARATION AND PAYMENT OF DIVIDENDS, sec. 65.

**Shall make report; amendment.**—An assignee is not required to make an amendment to his report where it is not shown to be proper or that the interest of the bankrupt will be protected by making it, or in-



jured by not. (In re Kingon, 8 N. B. R. 446; 36 How. Pr. 302; Fed. Cas. 7815.)

**Shall set apart exemptions.**—It was held under the former act that a rule requiring assignees to report within twenty days after receiving the articles set off to the bankrupt as exemptions is to be strictly observed, but it is to receive such construction as to prevent injustice. Where the property has not come into possession of the assignee, and a question as to his right to it is pending, the time should be computed from the final decision of the court. (In re Shields, 1 N. B. R. 170; 15 Pittsb. Leg. J. (O. S.) 391; Fed. Cas. 12785.) A schedule of property set aside for the bankrupt was prepared by the register. It was held that it was the duty of the assignee to set aside property to be exempted without interference of the register. (In re Peabody, 16 N. B. R. 243; 9 Chi. Leg. News, 243; Fed. Cas. 10866.) The title to property set apart as exempt, when exemption is unauthorized by law, remains in the assignee, and no exception need be taken to the report making such unauthorized exemption; but accounts may be excepted to for omission therefrom of the value thereof. (In re Gainey, 2 N. B. R. 163; Fed. Cas. 5181.) The only relation sustained by an assignee to a bankrupt is to set aside the exempt property; in other respects he is the agent of the law for the benefit of creditors (Aiken v. Edrington, Sr., et al., 15 N. B. R. 271; Fed. Cas. 111); and an assignee represents the rights of creditors as well as the rights of the bankrupt. (In re Wynne, 4 N. B. R. 5; 2 Amer. Law T. Rep. Bankr. 116; Fed. Cas. 18117.) An assignee cannot make an allowance from the general fund of money in lieu of articles sold under distress for rent which would have been exempt. (In re Lawson, 2 N. B. R. 19; Fed. Cas. 8149.)

**Assignee's duties generally.**—A trustee cannot purchase at a sale where he as trustee sells (Lockett v. Hoge, 9 N. B. R. 167; Fed. Cas. 8444); nor can an assignee's solicitor bid at the assignee's sale. (Citizens' Bank v. Ober, 18 N. B. R. 828; 1 Woods, 80; Fed. Cas. 2731.) When an assignee has accepted appointment and given bonds, his neglect to take into his own custody the deed of assignment and have the same recorded is no ground for withholding a discharge. (In re Pierson, 10 N. B. R. 107; Fed. Cas. 11153.) If the assignee has any power over a subject, it must be found in the bankrupt law itself. (Dutcher, Ass., v. Bank, 11 N. B. R. 457; 12 Blatchf. 435; Fed. Cas. 4208.) He is an officer of the court, and is strictly limited to powers conferred by the act and orders of the court. (In re Ryan & Griffin, 6 N. B. R. 235; Fed. Cas. 12182.)

Trustees have no judicial authority, and where such is needed they must resort to it, as the bankrupt would have been compelled to do, if no proceedings had been instituted. (In re Darby, 4 N. B. R. 98; 13 Pittsb. Leg. J. 154; Fed. Cas. 3670.)

b. Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be nec-

essary to the validity of their every act concerning the administration of the estate.

There must be appointed at least one or three trustees (sec. 44); and the death or removal of one shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor. (Sec. 46.)

**Sec. 48. Compensation of trustees.**—*a*. Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

[Act of 1867. SEC. 17. . . . He shall be allowed, and may retain out of the money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court.

SEC. 28. . . . In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereon; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars, and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him.]

The commission is to be computed on the sums to be paid as dividends and not on the income or outlay, thus making the trustees financially interested in the careful management of the estate, and reduces to a minimum the dangers of extravagant expenditures. The deposit of five dollars is not required in case of a voluntary bankrupt, provided he accompanies his petition with an affidavit setting forth the fact that he has not and cannot obtain the money with which to pay his fee. (Sec. 51. See also Orders XXXV, 4.) While the compensation thus allowed trustees is to be in full for the services performed, it does not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts. (Orders XXXV, 3.)

Compensation of trustee.—In a case so doubtful that investigation is necessary, the assignee is entitled to his commission, in preference to one who has obtained judgment against him for a wrongful conversion as assignee (In re Oberhoffer, 17 N. B. R. 546; 9 Ben. 484; Fed. Cas. 10396); and where an assignee desires to charge estate for professional and clerical services rendered himself, he must first obtain leave of court; and where the application is withheld until final account, he must prove the necessity and reasonableness of the charges. (In re Noyes, 6 N. B. R. 277; Fed. Cas. 10871.)

b. In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administration of any estate a greater amount than one trustee would be entitled to.

c. The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

Upon the complaint of creditors, the court may remove trustees for cause, upon hearings, and after notice to them. (Sec. 2—17.)

**Sec. 49. Accounts and papers of trustees.**—a. The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

[Act of 1867. SEC. 15. . . . The assignee shall keep a regular account of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.]

The failure of the trustee to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of the estate and the papers and records in his charge, by parties in interest, when directed

by the court so to do, works a forfeiture of his office and renders him liable to punishment. (Sec. 29, *c*)

**Sec. 50. Bonds of referees and trustees.**—*a*. Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

[Act of 1867. SEC. 3. . . . Before entering upon the duties of his office, every person so appointed a register in bankruptcy shall give a bond to the United States, with condition that he will faithfully discharge the duties of his office, in a sum not less than one thousand dollars, to be fixed by said court, with sureties satisfactory to said court, or to either of the said justices thereof.]

*b*. Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

[Act of 1867. SEC. 13. . . . The judge at any time may, and upon the request in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.]

The notice to be sent to the trustee of his appointment should contain a statement of the penal sum of his bond. (Orders XVI)

*c.* The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of a trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

The creditors' first meeting must be held not less than ten nor more than thirty days after the adjudication.

*d.* The court shall require evidence as to the actual value of the property of sureties.

*e.* There shall be at least two sureties upon each bond.

*f.* The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

*g.* Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

Corporations may become sureties on the bonds of referees and trustees by virtue of this specific provision of the law (sec. 50, *g*), but the statute is silent as to this right with reference to the other bonds required. There is considerable doubt, however, whether congress, by specifically mentioning these two instances in which corporations might become sureties, intended to exclude them in all other cases when required. On the bond required under section 8, *e*, there must be "at least two good and sufficient sureties who shall reside within the jurisdiction of the court, to be approved by the court," while under section 69 the bond must have "such sureties as the judge shall approve." In the first instance bonding corporations would probably be excluded from becoming surety, while in the latter instance it would seem to be discretionary with the court.

*h.* Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

*i.* Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this Act, of whose estates they are respectively trustees.

*j.* Joint trustees may give joint or several bonds.

*k.* If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

[Act of 1867. SEC. 13. . . . If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.]

The bond of the referee must be given before he assumes the duties of the office and within such time as the district court shall prescribe (sec. 50, *a*), while a trustee must give it before entering upon the performance of his duties and within ten days after his appointment. (Sec. 50, *b*.)

*l.* Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

*m.* Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

**Sec. 51. Duties of clerks.**—*a.* Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and can not obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and

within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

A fee of \$10 is to be deposited with the clerk at the time the petition is filed in each case, except when not required from a voluntary bankrupt, for the purpose of paying the referee in addition to his commission, after his services have been rendered. (Sec. 40, a.) A fee of \$5 is deposited with the clerk at the time the petition is filed in each case, except when not required from a voluntary bankrupt, which is to be paid the trustee in addition to his commission upon the completion of his service. (Sec. 48, a.)

Clerks of United States courts are, under section 828, Revised Statutes, entitled to charge ten cents a folio (one hundred words) for making copies of papers on file, or of any entry or record. For a certificate the fee is fifteen cents, and for affixing the seal of the court twenty cents. In the districts of Oregon, Nevada, Northern and Southern California, North Dakota, and the territories of New Mexico and Arizona, the clerks are entitled to charge double fees.

In line with the statutes of many states permitting suits to be instituted without first requiring security for costs, a voluntary bankrupt unable to pay the necessary filing fee may, nevertheless, file his petition when accompanied by his affidavit setting forth his inability to pay such referee. See also act of July 20, 1893 (3 Supp. U. S. Rev. Stat. 41), authorizing suits in United States courts without prepayment of fees or costs, upon the filing of an affidavit of inability to pay the same. The judge, at any time during the pendency of bankruptcy proceedings, may order these fees to be paid out of the estate, or may, after notice to the bankrupt and satisfactory proof that he then has or can obtain the money with which to pay the fees, order him to pay them, and on default dismiss the petition. (Orders XXXV.) Before incurring any expenses, the clerk, marshal or referee may require from the bankrupt, or the person in whose behalf the duty is performed, indemnity for such expenses. (Orders X.)

The referee is required to transmit to the clerk such papers as may be on file before him, whenever the same are needed in any proceedings in courts (sec. 39—8), and transmit to the clerk the records required to be kept by him when the cases are concluded (sec. 39—7), and when his office is in the same city where the court of bankruptcy convenes, call upon and receive from the clerk all of the papers filed therein which have been referred to him. (Sec. 39—10.)

Bonds of referees, trustees and designated depositories are to be filed of record in the office of the clerk of the court. (Sec. 50, b.)

Clerks are required to keep a docket of the cases brought under the act. (Orders I.)

**Sec. 52. Compensation of clerks and marshals.**—*a.* Clerks shall respectively receive as full compensation for their service to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

[Act of 1867. SEC. 47. . . . That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the registers: (Here follows specification of fees.)]

Under this provision the fees of clerks are limited absolutely to the filing fee of \$10, and no charge can be made for issuing writs or summons, subpoenas, filing and entering papers, and the many other characters of service for which trivial fees are allowed by law in other litigations. But such fees do not cover copies of papers furnished to other persons or expenses necessarily incurred in publishing or mailing notices or other papers. (Orders XXXV.)

*b.* Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

[Act of 1867. SEC. 47. . . . Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees, and no more: (Here follows specification of fees.)]

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

The enumeration of the foregoing fees shall not prevent the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in this section in classes of cases to be named in their rules and orders.]



As under the act of 1867 marshals received compensation as such and also as messengers, the provision as to messengers' fees in the earlier act is here inserted, although under the present law no provision is made for the service of messengers.

By the act of May 28, 1896 (3 Supp. R. S. 479), marshals are placed upon an annual salary, but the fees taxable under existing law for services are fixed by section 829, United States Revised Statutes, and are to be accounted for and turned into the treasury of the United States. They must make return under oath of the actual and necessary expenses in the service of warrants addressed to them and of other services performed. (Orders XIX.)

Marshals must present vouchers for the items charged in their accounts, or produce satisfactory reasons for the absence of same. (In re Comstock et al., 9 N. B. R. 88; Fed. Cas. 3075.) A marshal's affidavit of expenses should state that they were actually incurred and are just and reasonable. (In re Lowenstein, 8 N. B. R. 65; 8 Ben. 422; Fed. Cas. 8572.) When a taxation is made it is conclusive, and the marshal is entitled to receive the fees taxed in his favor, unless there is fraud or bad faith on his part. (In re Rein, 18 N. B. R. 551; 8 Ben. 384; Fed. Cas. 11678.) If the marshal has two or more processes in his hands at the same time and in the same proceeding, which may be served at the same time and place, mileage can only be charged once; but if the service of any one of such processes makes additional travel necessary, he may charge for such additional travel. (In re Donahoe et al., 8 N. B. R. 453; Fed. Cas. 3979.)

**Sec. 53. Duties of Attorney-General.—a.** The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

**Sec. 54. Statistics of bankruptcy proceedings.—a.** Officers shall furnish in writing and transmit by mail such information as is within their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

## CHAPTER VI.

### CREDITORS.

**Sec. 55. Meetings of creditors.**—*a.* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

A bankrupt is required to attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge if filed, and, when present at the first meeting or at such other time as the court shall order, submit to an examination concerning the conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate, though he is not required to attend such meetings at a place more than one hundred and fifty miles distant from his home or principal place of business, unless ordered by the court, and he shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town or village of his residence. (Sec. 7.) Creditors holding such claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings. (Sec. 56, *b.*) Claims of secured creditors and of those who have priority may be allowed to enable such creditors to participate in the proceedings at the creditors' meetings held prior to the determination of the value of their securities or priorities. (Sec. 57, *c.*) At the first meeting of the creditors after the adjudication or after a vacancy has occurred in the office of trustee, or

after the estate has been re-opened, a composition set aside or discharge revoked, they should appoint one or three trustees of such estate (sec. 44), and fix the amount of their bond, which may at any time be increased. (Sec. 50, c.) Creditors are entitled to at least ten days' notice by mail, from the referee to their respective addresses, of all meetings of creditors, in addition to which notice of the first meeting must be published at least once, and as many times additional as the court may direct, the last publication to be at least one week prior to the date fixed for the meeting. (Sec. 58.)

**First meeting.**—The term "first meeting," employed in section 18 of the act of 1867, does not mean the actual first assembling of creditors, but refers to the meeting called to choose an assignee, whether it be held on the day designated in the notice or on the day to which it adjourns, and is used in contradistinction to the terms "second meeting" and "third meetings. (In re Phelps et al., 1 N. B. R. 139; 2 Amer. Law T. Rep. Bankr. 25; Fed. Cas. 11071.) There can be only one "first meeting," and all adjournments are a continuance of the same. If objection to the appointment of an assignee is made at that stage, it is considered as continuing, and the register cannot appoint unless the objection is actually withdrawn. (In re Norton, 6 N. B. R. 297; Fed. Cas. 10848.) This "first meeting" should be organized at the hour designated in the official notice, and should be kept open until an assignee is chosen or it is ascertained that no choice can be made. (In re Phelps et al., 1 N. B. R. 139; 2 Amer. Law T. Rep. Bankr. 25; Fed. Cas. 11071.)

**Adjournments.**—Registers with the exercise of proper legal discretion have entire control over proceedings pending before them, including the power to grant or refuse adjournments and postponements (In re Hyman, 2 N. B. R. 107; 3 Ben. 28; 86 How. Pr. 282; Fed. Cas. 6984; In re Chemy et al., 19 N. B. R. 16; Fed. Cas. 2637); but he has no authority to adjourn a meeting where a warrant was issued in a case returnable on a certain day, but because of yellow fever he was prevented from attending at that time, and he made orders of adjournment and forwarded them to his assistant, he being absent from the city. (In re Dickinson, 18 N. B. R. 514; 26 Pittsb. Leg. J. 143; Fed. Cas. 8895.)

b. At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

**Act of 1867. SEC. 4.** . . . Every register in bankruptcy shall . . . hold and preside at meetings of creditors.

**SEC. 12.** . . . At the meeting held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doing thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required. . . .]

At the first meeting after the adjudication or after a vacancy has occurred in the office of trustee, the creditors shall appoint one or three trustees. (Sec. 44, a.) When present at the first meeting of his creditors, and at such other time as the court shall order, the bankrupt must submit to an examination concerning the conduct of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind and whereabouts of his property, and, in addition, all matters affecting the administration and settlement of his estate. (Sec. 7, a.)

**Proof of claims.**—A preferred creditor may, in many cases, surrender his security or preference at the first meeting of creditors, and prove his claim. (In re Saunders, 13 N. B. R. 164; 2 Lowell, 444; Fed. Cas. 12371.) At the first meeting of creditors in the case of an involuntary bankrupt, proofs of certain claims against the estate were presented, but, the names of the alleged creditors not appearing on the bankrupt's schedule, it was ordered that the proofs should be postponed until after the election of an assignee. (In re Milwain, 12 N. B. R. 358; 1 N. Y. Wkly. Dig. 76; Fed. Cas. 9623.) The register has no power either to admit or postpone a contested claim which he considers valid, but must report it to the court if the vote upon it could affect the choice of assignee. (In re Bartusch, 9 N. B. R. 478; Fed. Cas. 1086.)

**Examinations of bankrupts.**—Only the bankrupt or a creditor is entitled to be represented by counsel, either before a register or the court, unless where a witness is made a party to a new collateral proceeding by being cited to answer for an alleged contempt. (In re Fredenburg, 1 N. B. R. 34; 2 Ben. 133; Fed. Cas. 5075.) An attorney at law appearing before a register to represent a party in interest is to be recognized as such unless some one puts him to proof, by a rule therefor; but all others must produce formal powers of attorney. (In re Scott, Collins & Co., 15 N. B. R. 73; Fed. Cas. 12519.) A power of attorney authorizing a person to appear for a creditor is not required to be acknowledged. (In re Powell, 2 N. B. R. 17; Fed. Cas. 11354.) An order for the examination of a bankrupt must be applied for by petition or affidavit duly verified, showing good cause therefor. (In re Adams, 2 N. B. R. 33; 2 Ben. 503; 36 How. Pr. 51; Fed. Cas. 39.) And a register may allow such order for an examination by each creditor. (In re Adams, 2 N. B. R. 92; 3 Ben. 7; 36 How. Pr. 270; 1 Chi. Leg. News, 107; Fed. Cas. 40.) A bankrupt may be examined, not

withstanding the creditor failed to appear upon the day fixed for the original examination. (In re Robinson et al., 2 N. B. R. 162; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 11942.) The first meeting of creditors had been held, and an order made for the examination of the bankrupt by a certain creditor, but the date was several times postponed. The bankrupt finally obtained an order to show cause why he should not be discharged, to the granting of which the creditor objected, and an examination was allowed. (In re Seckendorf, 1 N. B. R. 185; 2 Ben. 464; 15 Pittsb. Leg. J. 450; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 12600.) He was also required to submit to examination, which, under a previous order, had been abruptly terminated by non-attendance of assignee's counsel. (In re Van Tuyl, 2 N. B. R. 25; Fed. Cas. 16881.) At the public meeting after the application for a discharge before the register, or at any adjourned session of it, the bankrupt's examination may be finished (In re Sherwood, 1 N. B. R. 74; 25 Leg. Int. 76; 1 Amer. Law T. Rep. Bankr. 47; 6 Phila. 461; Fed. Cas. 12774); and the examination may be adjourned beyond the return day of the order to show cause. (In re Mawson, 1 N. B. R. 41; 1 Amer. Law T. Rep. Bankr. 46; Fed. Cas. 9820.)

See also EVIDENCE, sec. 21, *ante*.

**Selection of trustees.**—If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may order that no trustee be appointed. (Orders XV.) When at the first meeting of creditors but one creditor proves his debt, he has the right to choose the assignee. (In re Haynes, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 6269.) The right of creditors to choose one or more assignees or trustees at the first meeting cannot be denied, and after an assignee has been appointed he may, at a subsequent meeting, be removed and trustees appointed in his stead. (In re Jones, 2 N. B. R. 20; Fed. Cas. 7447.) A creditor cannot change his vote, on the ground of his own mistake in voting after the meeting of creditors has adjourned, and thereby give the register power to appoint the assignee. (In re Scheiffer et al., 2 N. B. R. 179; 1 Chi. Leg. News, 261; Fed. Cas. 12445.)

See also APPOINTMENT OF TRUSTEES, sec. 44, *ante*.

**Estoppel.**—A creditor who assents by word or act, or even by silence, at a meeting of creditors, is estopped to set up a deed as an act of bankruptcy. (In re Mass. Brick Co., 5 N. B. R. 408; 2 Lowell, 58; 4 Amer. Law T. 220; Fed. Cas. 9259.)

**Composition meetings of creditors.**—A composition absolutely discharges the debts of those creditors whose names, addresses and debts are placed in the statement produced at the meeting of creditors, and no other discharge is needed. (In re Becket, 12 N. B. R. 201; 2 Woods, 178; 7 Chi. Leg. News, 248; Fed. Cas. 1210.) The creditors affixing confirmatory signatures to the resolution of composition need not have been present at the creditors' meeting; nor need their signatures be attached at such meeting, but they must have been attached at or before the hearing. (In re Scott, Collins & Co., 15 N. B. R. 78; 4 Cent. Law J. 29;

Fed. Cas. 12519.) A resolution of composition cannot be recorded where the statement of assets and of debts shows that the requisite proportion of creditors have not confirmed it, although the statement is inaccurate. A statement of debts and assets can be corrected only at a meeting of creditors. (In re Asten et al., 14 N. B. R. 7; 8 Ben. 350; Fed. Cas. 594.) Where notice of the first meeting does not reach creditors, and the court is satisfied that their votes would have changed the result, and that they did not attend through failure of the notice, on their application the meeting should be re-opened and each vote received; but this relief should be sought promptly, and if one waits until the second meeting has convened, he cannot have the first meeting re-assembled without good cause for the delay. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.)

The rulings of the register on the right to vote in a composition meeting are subject to review by the court to determine whether the requisite majority of those present has assented to the composition; and when the right of a party to prove his claim and vote at a composition meeting is denied by the register, his course is to ask an adjournment of the meeting until his right as a creditor be determined by the court before the final vote. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.) Attaching creditors have no right to participate in a composition meeting. (In re Shields, 15 N. B. R. 532; 4 Dill. 588; 4 Cent. Law J. 557; 24 Pittsb. Leg. J. 190; Fed. Cas. 12784.) A resolution of composition may be confirmed, although it does not provide for the expenses of an attachment, if there has been no first meeting of creditors and no appointment of an assignee. A resolution of composition which is passed without calling the first meeting of creditors and electing an assignee does not dissolve an attachment issued within four months before the commencement of such proceedings. (In re Clapp & Co., 14 N. B. R. 191; 2 Lowell, 468; Fed. Cas. 2785.) When the resolution of composition has been definitely passed upon by the creditors assembled, the business of the meeting is over. (In re Spillman, 13 N. B. R. 214; 23 Pittsb. Leg. J. 87; Fed. Cas. 13242.) When a debtor has had a meeting of his creditors duly held, and has had his proposition for a settlement passed upon, he should not be permitted to annoy his creditors by requiring their attendance at further meetings; but where it clearly appears that the object of the meeting failed, by reason of the failure to properly instruct the attorneys who represented the dissenting creditors, it is proper to direct another meeting for the purpose of again considering the debtor's offer of a composition. (In re McDowell et al., 10 N. B. R. 459; 6 Biss. 193; 6 Chi. Leg. News, 413; Fed. Cas. 8776.) Objection to the confirmation of a composition which was opposed by two creditors on the ground that at the first meeting one of the debtors was excused from examination on account of illness, by vote of the creditors, was held to be frivolous. (In re Wilson et al., 18 N. B. R. 300; Fed. Cas. 17785.) Small minority of creditors present at a composition meeting have a right to insist upon opportunity for examination of bankrupt before vote is taken, but such

right is waived by moving for vote before such examination has been had. (In re Little, 19 N. B. R. 234; 2 N. J. Law J. 211; Fed. Cas. 8392.) The creditors are to decide on the sufficiency of the excuse for a debtor's absence from their meeting, and the court should not disturb such decision without good cause shown. (In re Wronkow et al., 18 N. B. R. 81; 26 Pittsb. Leg. J. 2; 15 Blatchf. 88; Fed. Cas. 18105.)

c. The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this Act.

d. A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

[Act of 1867. SEC. 27. . . . At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one-half in value of the creditors shall attend such meeting, either in person or by attorney, it shall be the duty of the assignee so to determine. . . .

SEC. 28. . . . If by accident, mistake, or other cause, without default of the assignee, either or both of the said

second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held.]

In the event that no trustee is appointed by reason of the fact that the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may order that no meetings other than the first meeting shall be called. (Orders XV.) Whenever by reason of a vacancy in the office of trustee or for any other cause, it becomes necessary to call a special meeting, the court may call such meeting. (Orders XXV.)

*e.* The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

*f.* Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

[Act of 1867. SEC. 28. . . . That the like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of the creditors shall then be called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, the same shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors no further meeting shall be called, unless ordered by the court.]

The trustee must lay before the final meeting a detailed statement of the administration of the estate; and make final reports and file final accounts with the court fifteen days before the day fixed for the final meeting of the creditors (sec. 47, *a*), of which ten days' notice must be given all creditors. (Sec. 58, *a*.)



**Sec. 56. Voters at meetings of creditors.—a.** Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

[Act of 1867. SEC. 23. . . . And any creditor may act at all meetings by his duly constituted attorney the same as though personally present.]

While this section does not in so many words provide for representation at creditors' meetings otherwise than in the person of the creditor, yet in view of the fact that the term "creditor" comprehends any one who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney or proxy (sec. 1—9), it is clear that the law-makers intended to sanction a mode of representation through a duly authorized agent, attorney or proxy. This is further borne out by the fact that a penalty is provided for any person presenting under oath any false claim for proof against the estate of a bankrupt, or using any such claim in composition, personally or by agent, proxy or attorney, or as agent, proxy or attorney. (Sec. 29, b, 8.) By General Orders IV it is provided that a party may appear and conduct the proceedings by an attorney.

The time and place for holding meetings is fixed by section 55.

**Election of trustee.**—Where an assignee offered certain creditors to pay their claims in full in consideration of their giving him power of attorney to vote for them at election of assignee, the court held that the election should be disregarded and the official assignee be appointed. (In re Haas & Samson, 8 N. B. R. 189; Fed. Cas. 5884.) At the first meeting of creditors, fifty creditors, representing about \$1,000 of claims, voted for J. C. for assignee, and twenty creditors, representing about \$10,000, voted for N. C., whereupon the register stated that as there was no choice made it would be his duty to appoint the assignee, and he accordingly appointed J. C. The court held that the duty of appointing the assignee devolved upon the judge of the bankruptcy court, and that any creditor had the right to object to the appointment being made by the register. (In re Pearson, 2 N. B. R. 151; 2 Amer. Law T. Rep. Bankr. 66; Fed. Cas. 10678.) A creditor cannot change his vote on the ground of his own mistake in voting after the meeting of creditors has adjourned, and thereby give the register power to appoint the assignee; but such creditor may explain his mistake, or make any other objection to the choice of the assignee to the court before which the subject of the approval of the assignee will be heard and determined. (In re Scheiffer et al., 2 N. B. R. 179; 1 Chi. Leg. News, 261; Fed. Cas. 12445.)

See also APPOINTMENT OF TRUSTEES, sec. 44.

**Postponement of proof of claim as affecting election of trustee.—**

The postponement of a proof of claim by a register in bankruptcy affects no right of the creditor except the right to vote for assignee. (In *re Lake Superior Ship Canal, Railroad and Iron Co.*, 7 N. B. R. 376; Fed. Cas. 7997.) Proofs of claim filed after election for an assignee in bankruptcy will not entitle claimant to vote thereon to change the result of an election appealed from. (In *re Lake Superior Ship Canal, Railroad and Iron Co.*, 7 N. B. R. 376; Fed. Cas. 7997.) Debts proved before election of assignee and sold and assigned after proof must be voted upon by owner and not original creditor, the owner being entitled to one vote; and debts proved and filed with the register may be postponed for investigation before the assignee, and not allowed to be voted upon for assignee. (In *re Frank*, 5 N. B. R. 194; 5 Ben. 164; Fed. Cas. 5050.) Where the officers of a bankrupt corporation present large claims, the register in bankruptcy should postpone the proof of such claims until after the election of assignee. The vote for assignee must be taken at the earliest practicable moment. Creditors who have proved their claims may, if they choose, postpone such action until others have proved, but they are not compelled to do so. So, if proofs of claims are postponed, such creditors are not entitled to vote. They may, however, have the proceedings certified to the court, and, if the register's rulings were erroneous, the court will set aside the result of the vote and refer the matter back for a new vote, unless it appears that the vote of the complaining creditor would not change the result. (In *re Lake Superior Ship Canal, Railroad and Iron Co.*, 7 N. B. R. 376; Fed. Cas. 7997.)

**Power of attorney to appear for voter.—**A power of attorney authorizing a person to appear for a creditor is not required to be acknowledged (In *re Powell*, 2 N. B. R. 17; Fed. Cas. 11354); but it has been held that an attorney cannot act for a creditor at meetings held in the course of proceedings in bankruptcy, unless authorized to do so by power of attorney properly acknowledged. (In *re Christley*, 10 N. B. R. 268; Fed. Cas. 2703.) A power of attorney executed by one member of a firm, on behalf of the firm, authorizing a person to cast the vote of the firm for assignee at the first meeting of creditors, is valid. (In *re Barrett*, 2 N. B. R. 165; 2 Hughes, 444; 1 Chi. Leg. News, 202; 2 Amer. Law T. Rep. 182; 11 Int. Rev. Rec. 21; 1 Amer. Law T. Rep. Bankr. 144; Fed. Cas. 1043.)

A power of attorney, in accordance with the proper form, in which the concluding words are: "and with like power to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be holden therein, for any of the purposes aforesaid, or for the declaration of dividend, or for any other purpose, in my interest whatever," does not authorize the filing of an opposition to the bankrupt's discharge by the attorney to whom the letter is given. (*Creditors v. Williams*, 4 N. B. R. 187; Fed. Cas. 3379.)

**Proof of claim necessary to qualify voter.—**Until he has proven his claim, a creditor has no right to be heard in bankruptcy proceedings or

in any other character (In re Brisco, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 1886); and creditors inhibited from proving their debts will be excluded from voting for an assignee. (In re Stevens, 4 N. B. R. 122; Fed. Cas. 18391.) Only creditors who prove their claims are entitled to engage in or take part in the proceedings at a composition. (In re Keller et al., 18 N. B. R. 331; Fed. Cas. 7654. See also In re Mathews et al., 17 N. B. R. 225; Fed. Cas. 9274.)

**Powers of general creditors.**—The general creditors have no power to act except to vote on the selection of an assignee and on the subject of dividends. (In re Campbell et al., 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2348.) So when at a meeting of creditors for election of assignee one creditor refused to sign after voting, and another's vote was rejected on the ground of having voted corruptly, and three votes were taken before a majority was secured, the court held, first, that a creditor has a right to change his mind after voting; second, that a corrupt vote should be rejected; and third, the result not being affected by such rejection, a new selection should not be ordered. (In re Pfromm, 8 N. B. R. 357; Fed. Cas. 11061.) Efforts of bankrupt's friends to buy his debts and stop proceedings in bankruptcy do not constitute fraud upon Bankrupt Act, and constitute no reason for not voting upon the debts for election of assignee. (In re Frank, 5 N. B. R. 194; 5 Ben. 164; Fed. Cas. 5050.)

**Testimony as to voter's qualification.**—A register is not authorized to hear testimony as to a creditor's right to vote for assignee, without special order of the court. (In re Noble, 3 N. B. R. 25; 3 Ben. 332; Fed. Cas. 10282.) As a very general rule, the register should demand the same degree of proof, before admitting a creditor to vote for assignee, as is requisite in a trial at law or a hearing in equity. Exceptional cases, if free from all suspicion, might authorize his deviation from such rule. (In re Northern Iron Co., 14 N. B. R. 356; Fed. Cas. 10322; R. S. 5083.)

**Partnership—Choosing an assignee.**—Creditors who have proved a debt against a partner of a firm in bankruptcy have no right to participate in the election of the assignee for the firm, who must be chosen by the creditors of the firm only. (In re Phelps, 1 N. B. R. 139; 2 Amer. Law T. Rep. Bankr. 25; Fed. Cas. 11071.) In a separate adjudication against a bankrupt who is or has been a member of a firm, the separate creditors are entitled to vote for assignee (In re Falkner, 16 N. B. R. 508; Fed. Cas. 4624); and in case of the separate bankruptcy of one member of a firm, a joint creditor is entitled to prove his joint debt and vote for assignee. (In re Webb, 16 N. B. R. 258; 4 Sawy. 326; 10 Chi. Leg. News, 27; 5 N. Y. Wkly. Dig. 174; Fed. Cas. 17317.) A joint creditor can prove under a separate bankruptcy, though not to compete in the separate assets, and may vote for assignee (Wilkins v. Davis, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664); but a special partner has no right to vote in composition proceedings of the firm. (In re Henry, 17 N. B. R. 463; 9 Ben. 449; Fed. Cas. 6370.)

**Voting at first meeting—Composition.**—At the first meeting a creditor represented himself and filed proof of claim. He was not present at the last session when the vote was taken on a resolution of composition. The court held that he was to be counted as voting against the resolution unless he clearly indicated his intention to withdraw (*In re Richmond et al.*, 18 N. B. R. 302; Fed. Cas. 11798); so if a creditor fails to act on a composition his non-action is equivalent to a vote against what the debtor wants (*In re Lissberger*, 18 N. B. R. 230; Fed. Cas. 8384); and after a composition was accepted at the creditors' meeting, objection was taken to the vote of one of the creditors. It was held that the objection was too late. (*In re Block et al.*, 18 N. B. R. 323; Fed. Cas. 1551.) Where a debtor deceives his creditors into a vote on a composition which they would not have given had they known the facts, the court will interfere and withhold assent to the composition, even if there is only one dissenting creditor (*In re Keiler*, 18 N. B. R. 36; 10 Chi. Leg. News, 299; Fed. Cas. 7648); and when a party is aggrieved by ruling on his application for opportunity to prove his right to vote, the court may re-open the meeting and adjourn it, and provide for the determination of questions of the right to vote before the final vote is taken. (*In re Spencer*, 18 N. B. R. 199; Fed. Cas. 13229.) It must appear that wrong has been done to the minority creditors by the vote of the majority on a composition before the court will interfere. (*In re Wronkow et al.*, 18 N. B. R. 81; 26 Pittsb. Leg. J. 2; Fed. Cas. 18105.)

**b.** Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

[Act of 1867. SEC. 18. . . . No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee. . . .]

The claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities. (Sec. 57, *e.*)

**Secured creditors.**—None but unsecured creditors should be heard at the hearing for ratification of the composition for which notice was given (*In re Scott, Collins & Co.*, 15 N. B. R. 73; 4 Cent. Law J. 29; Fed. Cas. 12519); and a secured creditor may vote for assignee on so much of

his debt as is unsecured, where the security applies to a specific portion of his debt. (In re Parkes et al., 10 N. B. R. 82; Fed. Cas. 10754. See also In re Bolton, 1 N. B. R. 88; 2 Ben. 189; 1 Am. Law T. Rep. Bankr. 120; Fed. Cas. 1614. *Contra*, In re Stillwell, 7 N. B. R. 226; 11 Am. Law Reg. (N. S.) 706; Fed. Cas. 18448.)

**Disqualified by fraud.**—One who has received a preference in fraud of the Bankrupt Act cannot vote for assignee, and can surrender his preference to the assignee so as to prove his claim against the bankrupt's estate (In re Parham et al., 17 N. B. R. 800; Fed. Cas. 10712); and where certain creditors have received preferences, or their claims have been purchased with money belonging to bankrupt, the proof of such claims will be postponed until after the election of assignee, and their votes for assignee will be rejected (In re Hermann et al., 8 N. B. R. 153; Fed. Cas. 6435; see In re Chamberlain et al., 8 N. B. R. 173; Fed. Cas. 2574); but a creditor who has bought a debt with intent to prevent the adoption of a resolution for composition may vote upon it at the meeting for composition, if he have no fraudulent motive. (*Ex parte Morris*, 12 N. B. R. 170.)

**Sec. 57. Proof and allowance of claims.**—*a.* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

[Act of 1867. Sec. 22. . . . That all proofs of debts against the estate of the bankrupt, by or in behalf of creditors residing within the judicial district where the proceedings in bankruptcy are pending, shall be made before one of the registers of the court in said district, and by or in behalf of non-resident debtors before any register in bankruptcy in the judicial district where such creditors or either of them reside, or before any commissioner of the circuit court authorized to administer oaths in any district. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation before the proper register or Commissioner setting forth the demand, the consideration thereof (Here follows requirement as to contents of oath.) . . . Such oath or solemn affirmation shall be made by the claimant, testifying of his own knowledge, unless he is absent from the United States or prevented by some other good cause from testifying, in which cases the demand may be verified in like manner by the attorney or authorized agent of the

claimant testifying to the best of his knowledge, information, and belief, and setting forth his means of knowledge; or if in a foreign country, the oath of the creditor may be taken before any minister, consul, or vice-consul of the United States; and the court may, if it shall see fit, require or receive further pertinent evidence either for or against the admission of the claim. Corporations may verify their claims by the oath or solemn affirmation of their president, cashier, or treasurer. If the proof is satisfactory to the register or the commissioner, it shall be signed by the deponent, and delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts, which books shall be opened to the inspection of all the creditors.]

The bankrupt is required to examine the correctness of all proofs of claims filed against his estate. (Sec. 7—3.) From a judgment allowing or rejecting a claim or debt of \$500 or over, an appeal may be taken to the circuit court of appeals (sec. 25, a); and if the amount in controversy exceeds \$2,000 it may be taken from the circuit court of appeals to the Supreme Court, or where a justice of the Supreme Court certifies that the determination of the questions involved is essential to a uniform construction of the act. (Sec. 25, b.) U. S. Rev. Stat., § 1778, and the act of August 15, 1876 (1 Supp. R. S. 123), make provision for the persons before whom oaths may be administered.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk. (Orders XX.) Provision with reference to the proof of claims may also be found in Orders XXI.

**How proof must be given.**—A debt is to be considered as proved when it is duly authenticated and sent to the assignee or to the register. (Ex parte Harris et al., 16 N. B. R. 432; Fed. Cas. 6109.) In a proof of debt the creditor should set forth at least one full Christian name of the affiant and of the bankrupt, in addition to the surname. (In re Valentine, 12 N. B. R. 389; 4 Biss. 317; 1 N. Y. Wkly. Dig. 101; Fed. Cas. 16812.) The court has no discretion to refuse to receive and file a proof of debt which appears on its face to have been taken by a proper officer and to be correct in form and in substance. (In re Merrick, 7 N. B. R. 459; Fed. Cas. 9463.) Informality in proofs is not material where the creditor, as a witness, has sworn positively of his own knowledge. (McKinsey et al. v. Harding, 4 N. B. R. 10; Fed. Cas. 8866.) A deposition in support of a proof of claim in involuntary bankruptcy must show whether the claim

is secured or unsecured. (*Cunningham v. Cady*, 18 N. B. R. 525; 8 Chi. Leg. News, 165; 4 Am. Law Rec. 510; Fed. Cas. 8480.)

Where the consideration for a note presented for proof is set forth in a creditor's deposition as goods, wares, merchandise, etc., there should be stated the kind of goods, the quantity, the price, the date of the transaction and the time of delivery, if delivered at one time, or, if delivered continuously through a period of time, that period should be stated. (In re Elder, 8 N. B. R. 165; 1 Sawy. 78; 17 Pittsb. Leg. J. 178; 3 Amer. Law T. 140; 2 Chi. Leg. News, 241; 1 Amer. Law T. Rep. Bankr. 198; Fed. Cas. 4936.) For the holder of the paper of a bankrupt to be able to prove his claim, he must show that he paid value when he took it, or incurred some responsibility, or relinquished some right, or granted some indulgence, or discharged a precedent debt, upon the faith and credit of the paper. (In re Howard, Cole & Co., 6 N. B. R. 372; Fed. Cas. 6751.)

If no proof of loss has been furnished an insurance company or its assignee, but the assured proves his loss as a debt against the estate in bankruptcy, the claim will only be allowed upon proof that the company while solvent waived such proof. The assignee has no power to waive the proof. (In re Firemen's Ins. Co., 8 N. B. R. 123; 5 Chi. Leg. News, 265; Fed. Cas. 4796.)

Proof of debt in a foreign country must be taken in accordance with the requirements of the United States statutes. (In re Robert v. Lynch et al., 16 N. B. R. 88; 24 Pittsb. Leg. J. 205; Fed. Cas. 8635.)

**What must be proved.**—All claims against the estate of a bankrupt, however evidenced, must be proved (*Blum v. Ellis*, 18 N. B. R. 845); and he cannot legally be discharged, where the proofs of debt have been lost, until they are supplied. (In re Friedlob, 19 N. B. R. 123; 11 Chi. Leg. News, 189; Fed. Cas. 5118.)

**By whom proof must be made.**—Generally speaking, only the holder and owner of a claim can make proof. (In re Ford et al., 18 N. B. R. 426; Fed. Cas. 4932.) A mere agent, holding negotiable paper, cannot prove it, under objection, excepting in the name and for the benefit of the real owner, and therefore not at all when the owner is in a situation to make the proof himself (In re Saunders, 18 N. B. R. 164; 2 Lowell, 444; Fed. Cas. 12371); but proof of debt may be made by an agent who has had exclusive charge of the same, and knows personally all the facts required to be sworn to in proving it, the creditor himself having no personal knowledge thereof. (In re Watrous et al., 14 N. B. R. 258; 3 N. Y. Weekly Dig. 180; Fed. Cas. 17270; R. S. 5078.) Mere absence from the state or the locality where the proof is made is not alone cause for proof by an agent. (In re Jackson et al., 14 N. B. R. 449; 7 Biss. 280; Fed. Cas. 7123.) The absence of a claimant which will render a proof of debt by an agent admissible must be "from the United States;" nor will his agent's oath, that he is better acquainted with the facts than his principal, render the

agent's deposition alone admissible as proof. (In re Whyte, 9 N. B. R. 267; Fed. Cas. 17606.)

A receiver of property of a creditor of a bankrupt is an assignee of the debt due such creditor, and as such assignee may prove it, but if assigned before proof, the proof must be supported by deposition. (In re Mills, 17 N. B. R. 472; Fed. Cas. 9612.) A person who has acquired claims against a bankrupt by purchase, in an endeavor to settle the matter out of court will be allowed to prove these claims as though he were the original creditor. (In re Pease, 6 N. B. R. 173; Fed. Cas. 10880.) Where a note is held by a party as trustee for another, it must be proved by the holder as trustee or by the real owner. (Ex parte Dreyfus, 13 N. B. R. 43; 2 Lowell, 305; 1 N. Y. Weekly Dig. 296; Fed. Cas. 8043.)

Where there is presented for proof against a bankrupt's estate an account for goods sold to the bankrupt by a third person, which account is assigned for value to the one presenting it, before bankruptcy, the deposition of such party only need be produced. (In re Fortune, 3 N. B. R. 83.)

**Before whom proof must be made.**—Where the proof of a debt is taken before the attorney of the creditor it is inadmissible. (In re Nebe, 11 N. B. R. 289; Fed. Cas. 10073.) A notary public before whom proof is made must authenticate the same by his official seal as well as his signature, and a seal used in common with others will not answer. (In re Nebe, 11 N. B. R. 289; Fed. Cas. 10073. For *contra* see In re Strauss, 2 N. B. R. 18; Fed. Cas. 13532; and In re Haley, 2 N. B. R. 13; Fed. Cas. 5918.) It is sufficient if a creditor prove his claim before a notary public, who subscribes the jurat with his name, the words "notary public," and the county and state, and on the paper containing his certificate is impressed a seal containing the words "Notarial Seal," and the county and state, there being in the center of the seal a device impressed in the paper. (In re William W. Phillips, 14 N. B. R. 219; 8 Chi. Leg. News, 409; 22 Int. Rev. Rec. 306; Fed. Cas. 11098.)

Although bankruptcy proceedings have been stayed, the sole power to admit claims against the bankrupt's estate is not vested in the trustee, but they may and should be proved before the register. (In re Bakewell, 4 N. B. R. 199; 18 Pittsb. Leg. J. 289; 3 Pittsb. Rep. 323; Fed. Cas. 783.)

**When proof may be made.**—Where an assignee's discharge is improperly made and is set aside, claims may be proved subsequent to such discharge. (In re Maybin, 15 N. B. R. 465; Fed. Cas. 9337.) Proofs of claim filed after election for an assignee in bankruptcy will not entitle a claimant to vote thereon to change the result of an election appealed from. (In re Lake Superior Ship Canal, Railroad and Iron Co., 7 N. B. R. 376; Fed. Cas. 7997.) A creditor who proves his claim after the time for the hearing of an application for discharge cannot be heard in opposition to the application, nor can his debt be counted among the claims proved so as to affect the discharge. (In re Borst, 11 N. B. R. 96; Fed. Cas. 1666.) A plaintiff in a suit to enforce a lien against property of a bankrupt, pending at the commencement of proceedings in bank-



ruptcy, may, before the conclusion of such suit, prove his claim and have the same allowed by the court in bankruptcy as a valid lien for the full amount. (*Bucknam v. Dunn et al.*, 16 N. B. R. 470; 2 Hask. 215; Fed. Cas. 2094.)

Where an attorney files a petition with a register, setting up that prior to the bankruptcy he performed services for the bankrupt, for which he holds a note past due, and asks that the assignee be directed to pay him out of the funds for dividend, but he did not present the claim on the day appointed for the declaration of dividend, the fund cannot be re-opened to pay the claim. (*In re Smith*, 15 N. B. R. 97; 1 Tex. Law J. 42; Fed. Cas. 12969.)

What is not proof.—A creditor who, after making his deposition to prove his debt, retains possession of the deposition and does not allow it to pass into the hands of the assignee in bankruptcy, is not a creditor who has proven his debt. (*In re Sheppard*, 1 N. B. R. 115; 7 Amer. Law Reg. (N. S.) 49; Fed. Cas. 12758.) A deposition setting forth a claim against a bankrupt for unliquidated damages for a breach of contract, which does not appear in the bankrupt's schedules, is not proof thereof, unless the amount is fixed by assessment, application for which must be made by the creditor. (*In re Clough*, 2 N. B. R. 59; 2 Ben. 508; 16 Pittsb. Leg. J. 25; Fed. Cas. 2905.)

Postponement of proof.—Proof of a claim may be postponed until after the choice of an assignee. (*In re Smith*, 1 N. B. R. 25; 2 Ben. 113; Fed. Cas. 12971.) Where the officers of a bankrupt corporation present large claims, the register should so postpone the proof thereof. (*In re Lake Superior Ship Canal, Railroad and Iron Co.*, 7 N. B. R. 376; Fed. Cas. 7997.) When it appears at the first meeting of creditors that the names of certain creditors by whom claims against the estate are presented do not appear upon the schedule, the proof of such claims should be so postponed. (*In re Milwain*, 12 N. B. R. 358; 1 N. Y. Wkly. Dig. 76; Fed. Cas. 9623.) Where a *prima facie* case is made out that certain creditors have received preferences, or that their claims have been purchased with money belonging to the bankrupt and in collusion with him, the proof of such claims will be so postponed (*In re Herrman & Herrman*, 3 N. B. R. 153; Fed. Cas. 6426), as will a claim founded upon a large open account between the parties, and which is in dispute between them, as it is of a doubtful character. (*In re Jones*, 2 N. B. R. 20; Fed. Cas. 7447.) The proof of a claim which, at the first meeting of creditors, was postponed until the election of an assignee, is to be treated in all respects as if it had not been tendered and postponed. (*In re Herrman et al.*, 3 N. B. R. 161; 4 Ben. 126; Fed. Cas. 6425.)

Amendment of proof.—A bankrupt court may allow proofs of debt to be amended, and in cases of mistake or ignorance, whether of fact or law, will generally exercise that power in the absence of fraud and when all parties can be placed *in statu quo*, if the error had not occurred, and where justice seems to demand that it should be done. (*In re Parkes*, 10

N. B. R. 82; Fed. Cas. 10754.) A creditor, after examination before the register touching his claim, may file supplemental proof of claim, corresponding with the facts shown by his testimony. (In re Montgomery, 8 N. B. R. 108; Fed. Cas. 9729.) A creditor having security, and proving his demand in ignorance of his privilege, and omitting to mention his security, may be allowed, in the absence of fraud, to amend his proof. (In re McConnell, 9 N. B. R. 387; 10 Phila. 287; 31 Leg. Int. 61; 21 Pittsb. Leg. J. 107; Fed. Cas. 8712.) A deposition at the re-examination of an allowed claim may be filed with the same effect as if originally made as a deposition (In re Baxter et al., 18 N. B. R. 560; Fed. Cas. 1121); but a creditor having proved his claim on an old promissory note will not be allowed to amend his proof to show that a new note was given, for which the old note was part consideration, but such new note should be proved independently. (In re Montgomery, 3 N. B. R. 109; Fed. Cas. 9731.)

**Withdrawal of proof.**—Where a creditor makes proof of a claim and makes no mention of security held therefor, the proof being made through inadvertence, he should be given leave to withdraw it. (In re Clark & Bininger, 5 N. B. R. 255; Fed. Cas. 2806.) Where proof is made in ignorance of the security, or even under a mistake in regard to the law in the case, he should be allowed to withdraw it, and then prove as a secured creditor, when no injury has resulted to the unsecured creditor by such improper proof. (In re Jaycox & Green, 8 N. B. R. 241; Fed. Cas. 7242.)

**A moiety only of a claim provable.**—If the holder of a bill or note neglect to prove against the estate of one party to the note until he has received, or become entitled to receive, a dividend from any other party, he must give credit for what he has already received when he chooses to prove against the remaining party. (Ex parte Talcott, 9 N. B. R. 502; 2 Lowell, 320; Fed. Cas. 13184.) One owning a debt secured by an insurance policy on the life of the bankrupt is entitled to prove the amount of the debt less the surrender value of the policy. (In re Newland, 7 N. B. R. 477; 6 Ben. 342; Fed. Cas. 10170.) Pledgees of promissory notes void between the original parties thereto, which have been pledged to them as collateral security for the payment of an indebtedness, are entitled to prove so much of the notes as will secure dividends to the full amount of their claim. (Bailey, Ass., v. Nicholas et al., 2 N. B. R. 151; 2 Amer. Law T. Rep. Bankr. 60; 1 Chi. Leg. News, 185; Fed. Cas. 741.) Where a claimant, who has for several years held a chattel mortgage executed by the bankrupt, takes possession upon learning of his insolvency, and, within four months of the filing of the petition, sells the property and purchases it at the sale, and the assignee recovers judgment for the value of the property, the plaintiff can only prove for a moiety of his claim. (In re Kaufman et al., 19 N. B. R. 283; 2 N. J. Law T. 231; Fed. Cas. 7627.) Where a creditor, whose debt is secured by a deed of trust upon property of the bankrupt, causes the same to be sold, it being purchased by himself and others, and he, without surrendering his security, appears before the register to prove his demand, he should have his

proof heard, and for any deficiency from the sale he is a general creditor, to share *pro rata* in the distribution of the general assets. (In re Ruehle, 2 N. B. R. 175; 2 Amer. Law T. Rep. Bankr. 59; 16 Pittsb. Leg. J. (O. S.) 5; 1 Chi. Leg. News, 186; Fed. Cas. 12113.) The holder of a note advanced by a factor to a manufacturer, and by him indorsed and procured to be discounted, who has agreed to a composition with the factor and receives his right to prove the full amount of the note against the other parties to it, need not, in proving against the manufacturer, give credit for the full amount received by him on the composition, but must abate his proof by giving credit for the amount of the manufacturer's goods in possession of the factor at the time of his bankruptcy. (Ex parte Harris et al., 16 N. B. R. 432; 2 Lowell, 568; Fed. Cas. 6109.)

**The proof, in general.**— When a creditor seeks to prove a debt against the estate of a bankrupt, he stands in the position of a plaintiff at law. (In re Prescott, 9 N. B. R. 385; 5 Biss. 523; 6 Chi. Leg. News, 151; Fed. Cas. 11889.) Every person submitting himself to the jurisdiction of the bankrupt court in the progress of the cause, for the purpose of having his rights determined, is a party to the suit, and is bound by the determination of the court. (Wiswall et al. v. Campbell et al., 15 N. B. R. 431; 93 U. S. 847.) The proof of claim in bankruptcy is not a suit, the commencement of which is *per se* necessary to suspend the running of the statute of limitations (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Wkly. Dig. 243; Fed. Cas. 4331); but the proceeding to prove a debt is part of the suit in bankruptcy, and the judgment of the circuit court thereon is final. (Wiswall et al. v. Campbell et al., Ass., 15 N. B. R. 431; 93 U. S. 847.)

It is optional with the judgment creditor whether he will prove his debt in bankruptcy or rely on his judgment lien. (Heard v. Jones, 15 N. B. R. 402.) When a debtor is adjudged a bankrupt, all proceedings against him in a state court must stop, if the subject-matter of the suit can be proven against his estate in bankruptcy; and no creditor who holds a claim which might be proven in bankruptcy, whether the debt is secured by lien or not, can enforce such debt in a state court, except by the permission of the district court. (In re Winn, 1 N. B. R. 181; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.)

Although a foreign creditor's rights are not affected by United States bankruptcy proceedings until proof of debt is made in the United States, yet the remedy afforded, when sought in the United States courts, must be determined by the Bankrupt Act and laws of the United States. (In re Bugbee, 9 N. B. R. 258; Fed. Cas. 2115.)

Where a holder of promissory notes indorsed by the bankrupt purchases them for an exceedingly low price and is aware of trouble between the maker and the indorser, he must be charged with knowledge which he might have obtained if he had made inquiry, and he is also charged with notice of the bankrupt's insolvency. (In re Hook, 11 N. B. R. 232, Fed. Cas. 6672.)

A creditor holding collaterals is not bound to apply them before enforcing his direct remedies against the debtor. (Lewis, Trustee, v. United States, 14 N. B. R. 64; 92 U. S. 618.)

**The effect of proof.**—Proving a debt in bankruptcy does not of itself operate as an absolute extinguishment or satisfaction of the debt, the creditor being remitted to his former rights and remedies if the bankrupt be refused his discharge. (Dingee v. Becker, 9 N. B. R. 508; Fed. Cas. 3919; Miller v. O'Kain, 14 N. B. R. 145.) Where proof of a claim is given in the form required by statute, a *prima facie* case is made, subject only to an order for further proof and the right of a creditor, or person interested, to offer counter-proof. (In re Saunders, 13 N. B. R. 164; 2 Lowell, 444; Fed. Cas. 12371.) Rights of creditors accrue after admitted proof of claim, and such creditors then have the right to ask for an amendment of the petition for any defect therein. (In re Jones, 3 N. B. R. 20; Fed. Cas. 7447.) A debt or principal must be proven or allowed before the costs made prior to the commencement of proceeding in bankruptcy can be proved and allowed. The original debt having been allowed, attachment costs may be proved if made before commencement of proceedings in bankruptcy without knowledge of insolvency. (In re Preston, 5 N. B. R. 293; Fed. Cas. 11393.) A creditor proving his claim is a "party" to the proceedings, and in no sense a witness, and is not entitled to fees. (In re Paddock, 6 N. B. R. 396; Fed. Cas. 10658.) If a creditor prove his full claim without reference to his lien or security, and without apprising the bankrupt court of its existence, such an act would be waiver of the lien and a relinquishment of the security to the assignee. (Stewart v. Isidor et al., 1 N. B. R. 129; In re Granger & Sabin, 3 N. B. R. 30; Fed. Cas. 5694; In re McConnell, 9 N. B. R. 387; 10 Phila. 287; 31 Leg. Int. 61; 21 Pittsb. Leg. J. 107; Fed. Cas. 8712.) It is *prima facie* an extinguishment of any security held for the same and may ripen into a conclusive extinguishment. (In re Parkes, 10 N. B. R. 82; Fed. Cas. 10754.) Where, having a security on the property of a third party, he proves his claim without setting out his security and receives a dividend, he forfeits his security only in case those interested in the estate would be benefited thereby. (Bassett et al. v. Baird, 17 N. B. R. 177.) The creditor will have the benefit of any counter-bonds or collateral securities which the principal debtor has given to the surety, or person standing in the situation of a surety, for his indemnity; such securities being regarded as trusts for the better security of the debt; but if such creditor prove his debt as unsecured, he waives and relinquishes his lien (In re Jaycox & Green, 8 N. B. R. 241; Fed. Cas. 7242); but the mortgage is not thereby extinguished, the assignee being subrogated to the rights of the holder. (Hiscock, Ass., etc. v. Jaycox & Green, 12 N. B. R. 507; Fed. Cas. 6531.)

An indorser is not released from his liability even if the holder of the note has proved his debt in bankruptcy against the maker for the full amount as an unsecured claim; but the holder by so proving his debt

releases all his right and claim as well at law as in equity to a mortgage given for the purpose of indemnifying the indorser. (*Merchants' Nat. Bank of Syracuse v. Comstock*, 11 N. B. R. 285.)

If a party who took a bill of sale as security deliberately prove a debt which assumes that he is the absolute owner of the goods, and persist in such false claim in an action by the assignee to recover the goods, and attempt to support it by his own oath, he is estopped from claiming them as security. (*Willis v. Carpenter et al.*, 14 N. B. R. 521; *Fed. Cas.* 17770.)

Where execution has issued, and levy been made on the property of a debtor sufficient to satisfy the judgment, the creditor is not estopped from proceeding in bankruptcy against the debtor, but such proceeding will be held to be a waiver of the levy. (*In re Sheehan*, 8 N. B. R. 845; *Fed. Cas.* 12737; *In re Bloss*, 4 N. B. R. 37; *Fed. Cas.* 1562.) But a creditor who, in ignorance of his legal rights and in good faith, files proof of a claim secured by a deed of trust, will not be deemed to have waived his lien under such deed, especially if he be acting in a fiduciary capacity. (*In re Brand*, 8 N. B. R. 85; 2 *Hughes*, 384; 2 *Amer. Law T. Rep. Bankr.* 66; *Fed. Cas.* 1809.) A security is not waived by merely proving a second claim as a general claim. (*Hatch v. Seely*, 18 N. B. R. 390.) A creditor holding security for his debt does not in any manner prejudice his claim to the same, by proving his debt as one with security, and setting out the particulars of the security and its estimated value, such proof being a prerequisite to any action for the appropriation of the security, in satisfaction, in whole or in part, of the debt. (*In re Grinnell & Co.*, 9 N. B. R. 29; 7 *Ben.* 42; 21 *Pittsb. Leg. J.* 82; *Fed. Cas.* 5830.)

Any creditor of a bankrupt may oppose the discharge whether he has proved his debt or not (*In re Sheppard*, 1 N. B. R. 115; 7 *Amer. Law Reg. (N. S.)* 484; 1 *Amer. Law T. Rep. Bankr.* 49; *Fed. Cas.* 12758); but creditors who have proved their debts cannot have the bankrupt's discharge set aside after his death in order that they may prove their demands against the estate of the debtor in the hands of his administrator. (*Young et al. v. Ridenbaugh*, 11 N. B. R. 563; 8 *Dill* 239; 7 *Chi. Leg. News*, 242; *Fed. Cas.* 18173.) Where creditors each file a petition against a debtor who himself files a petition and is adjudged a bankrupt, and the creditors prove their claims under the voluntary petition, they thereby waive their right to continue the involuntary proceedings. (*In re Nounan & Co.*, 6 N. B. R. 579.) Where a debt is created by fraud, a creditor does not waive his right to sue for the balance by proving his claim and taking a dividend (*In re Clews et al.*, 19 N. B. R. 109; *Fed. Cas.* 2891); but where he proves his claim, and, finding no assets to pay it, attempts to force payment by a *fi. fa.*, he will be held to have waived his judgment lien by proving his claim. (*Heard v. Jones*, 15 N. B. R. 402.)

The prohibition that no creditor proving his claim shall be allowed to

maintain any suit therefor at law or equity against the bankrupt cannot have any broader scope than is warranted by the letter of the statute. It does not inhibit collateral remedies. The right of action against a party as a stockholder of a corporation is not affected by the bankrupt law. (*Allen v. Ward*, 10 N. B. R. 285.) Proving a debt and receiving a dividend in bankruptcy against a corporation are not a bar to recovering judgment for the balance in a state court. (*Ansonia Brass and Copper Co. v. New Lamp Chimney Co.*, 10 N. B. R. 355.) A creditor whose debt is secured by a mortgage of the bankrupt's estate, having proved his claim, may, with leave of the bankrupt court and in the absence of objection by the assignee, proceed to foreclose the mortgage in a state court (*McHenry et al. v. La Societe Francaise*, 16 N. B. R. 385; 95 U. S. 581); but a creditor who proves his debt and asserts his lien in the bankrupt court is not entitled to resort to a state tribunal to enforce his lien against the same property which was the subject of adjudication in the bankrupt court. (*Spilman v. Johnson*, 16 N. B. R. 145.)

Where an indorsee receives payment from the indorser during pendency of proceedings, he cannot unite in the petition, even though he proved his claim before payment but had not filed it. (*In re Broich et al.*, 15 N. B. R. 11; 7 Biss. 303; Fed. Cas. 1921.)

It is no ground of defense or suspension of an action on a joint or joint and several promissory note against a surety that the note has been proved as a claim against the principal in bankruptcy proceedings. (*Greeg v. Wilson*, 15 N. B. R. 142.)

Where, in making proof of a claim, a creditor does not show that the bankrupt holds an unsatisfied claim against him and the assignee brings suit on the claim, the creditor will not be entitled to a set-off for the amount allowed on his proof. (*Russell, Ass., v. Owen*, 15 N. B. R. 322.)

In an action for goods sold and delivered the defendant may plead in bar his bankruptcy, and the proof of the plaintiff's claim against his estate, or at any time after the institution of the proceedings in bankruptcy may apply to the court in which the action is pending for a stay of proceedings. If he does neither, the judgment rendered against him is valid, and, in the absence of fraud, is conclusive against him and the surety on his bond to dissolve an attachment. (*Cutter et al. v. Evans*, 11 N. B. R. 448.)

A bankrupt who is held in arrest and bail in a judgment in a civil action founded upon a debt created by fraud will not be discharged from custody by the court in which bankruptcy proceedings are pending, although the judgment debtor may have proved his debt in the proceedings. (*In re Robinson*, 2 N. B. R. 108; 6 Blatchf. 253; 36 How. Pr. 176; 2 Amer. Law T. Rep. Bankr. 18; Fed. Cas. 11939.)

**The effect of failure to prove.**—A creditor who has not proved his claim is entitled to be heard on a motion to set aside an adjudication of bankruptcy against his debtor (*In re Derby*, 8 N. B. R. 106; 6 Alb. Law

J. 422; Fed. Cas. 3815. *Contra*, In re Brisco, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 1886; but he has no rights in composition proceedings (In re Mathers et al., 17 N. B. R. 225; Fed. Cas. 9274), nor will he be heard in opposition to the bankrupt's discharge. (In re Burk, 8 N. B. R. 76; Deady, 425; 2 Amer. Law T. Rep. Bankr. 45; Fed. Cas. 2156; In re Levy, 1 N. B. R. 66; 2 Ben. 169; 1 Amer. Law T. Rep. Bankr. 122; Fed. Cas. 8297. *Contra*, In re Boutelle, 2 N. B. R. 51; 15 Pittsb. Leg. J. 616; 1 Chi. Leg. News, 80; Fed. Cas. 1705.) A discharge in bankruptcy will not release the lien of a judgment which was not proved. (Darsey v. Mumpford, 17 N. B. R. 181.) Without proof of the debt no lien can be enforced, any more than dividends can be received on account of it. (In re Jordan, 9 N. B. R. 416; Fed. Cas. 7529.)

Where the state law provides that a judgment is a lien from its date upon all the property of the defendant, a judgment creditor has the right to enforce this lien against exempt property of a bankrupt, if he did not prove his claim. (Bush v. Lester et al., 15 N. B. R. 86.) Where a judgment creditor whose judgment is a lien on the realty of the debtor does not prove his debt, and forecloses under the authority of the court in bankruptcy, but the land is sold under execution, the sheriff's sale may be set aside upon petition of the assignee. (Davis v. Anderson, 6 N. B. R. 146; Fed. Cas. 8623.) A petition by a secured creditor for leave to foreclose a mortgage will be dismissed if no notice be given the assignee, and no proof be made of the existence of the debt. (In re S. F. Frizella, 5 N. B. R. 122; Fed. Cas. 5182.)

**The proof of secured claims.**—A creditor secured by a mortgage upon real and personal property may prove his claim, upon making oath to the amount due him and the securities held therefor. (In re Bridgman, 1 N. B. R. 59; 1 Amer. Law T. Rep. Bankr. 48; Fed. Cas. 1866.) He may prove his claim to an amount exceeding the value of the security without abandoning the same, but he is bound to set forth the value, that he may vote as a creditor in respect to the overplus proven by him, upon the choice of the assignee (In re Bolton, 1 N. B. R. 83; 2 Ben. 169; 1 Amer. Law T. Rep. Bankr. 120; Fed. Cas. 1614), who may contest the claim for any usurious surplus. (Bromley, Ass. v. Smith et al., 5 N. B. R. 152; 2 Biss. 511; 3 Chi. Leg. News, 297; Fed. Cas. 1922.) It is not necessary, if he has recovered a judgment after the adjudication of the debtor as a bankrupt, to vacate it before he can prove the claim on which the judgment is recovered, provided the claim be otherwise valid and properly provable. (In re Stevens, 4 N. B. R. 122; Fed. Cas. 18391.) He may before hearing waive his security and join with unsecured creditors to make the requisite number and amount, he then having all the rights of an unsecured creditor. (In re Crossette et al., 17 N. B. R. 206; Fed. Cas. 8435.) If his debt be fully secured he may file a petition in bankruptcy. (In re Stansell, 6 N. B. R. 183; Fed. Cas. 18294; In re Bloss, 4 N. B. R. 37; Fed. Cas. 1562.) It is necessary for him, if his debt be secured by lien, to prove

or liquidate it as secured by him, that the court may be fully informed how to dispose of the assets of the bankrupt so as to do equity between all the creditors. (In re Winn, 1 N. B. R. 181; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.) A mortgagee must prove his debt in the bankruptcy court as a secured claim, before he is entitled to apply to such court for leave to foreclose his mortgage in another court. (In re Sabin, 9 N. B. R. 383; Fed. Cas. 12193.)

Where there are two classes of creditors having a common debtor who has several funds, and one class of creditors can resort to all the funds and the other to but part, the former take payment out of the fund to which they can resort exclusively; if the former resort to the fund common to both classes, to the loss of the latter, the latter are entitled to be substituted, to the extent of the deprivation to which they have been subjected, in the place of the former. (In re Foot et al., 12 N. B. R. 337; 8 Ben. 228; 1 N. Y. Wkly. Dig. 76; Fed. Cas. 4906.) Joint and separate estates are considered as distinct estates. A joint creditor having security on the separate estate may prove against the joint estate without relinquishing his security, or may prove his whole claim against both estates and receive a dividend for each, but so as not to receive more than the full amount of his debt from both sources. (In re Howard et al., 4 N. B. R. 185; Fed. Cas. 6750.) A creditor from whom the bankrupt has, with another, purchased land, giving in payment promissory notes on which there are sureties, secured by a deed of trust by the debtor and his joint purchaser to a third person, the deed providing that if any note be not paid the land will be sold by the trustee and the proceeds given the creditor, the latter is a secured creditor, and the land will be directed to be sold. (In re Stewart, 1 N. B. R. 42; 1 Amer. Law T. Rep. Bankr. 16; 15 Pittsb. Leg. J. 222; Fed. Cas. 13418.) All subsisting heirs are fully protected, but all their creditors must prove their demands and enforce their liens through the bankruptcy court. (Davis v. Anderson, 6 N. B. R. 146; Fed. Cas. 3623.) If, through negligence of the creditors, the surety has been discharged, or if he has lost his lien, the creditors have no equity. They must work out their equity, and apply their security so as to prove against either estate for the deficiency. (Ex parte Morris, 16 N. B. R. 572; 2 Lowell, 424; Fed. Cas. 9823.)

Where an attachment is dissolved by proceedings in bankruptcy, the costs that accrued under the attachment prior to the filing of the bankrupt's petition are not a valid lien upon the property in controversy. If incurred at defendant's request, however, they might be. (In re Preston, 6 N. B. R. 545; Fed. Cas. 11394.)

A bank should prove its demand for a debt due as secured by stock, and by leave of court have it sold, the proceeds to be applied to payment of the debt, and prove as a creditor of the estate for any balance that may remain. (In re Morrison, 10 N. B. R. 105; 6 Chi. Leg. News, 110; Fed. Cas. 9839.)



A mechanic's lien which derives its existence wholly from a state statute, and the continuation of which is dependent upon the commencement of suit within a prescribed period, is not preserved when no suit is commenced in the state court and no step taken in the bankruptcy court equivalent to such suit within the time limited by the statute, although the proceedings in bankruptcy are commenced within that period. A lien claimant can, as an equivalent for commencing a suit in a state court, prove or assert his lien in the bankruptcy proceedings within the time limited by the statute creating the lien. (In re William Brunquest, 14 N. B. R. 529; 7 Biss. 208; Fed. Cas. 2055.)

**Claims held to be unsecured.**—A personal claim of indebtedness against a bankrupt's estate does not constitute a lien upon property of the estate in the hands of one making such claim. (Sedgwick, Ass. v. Casey, 4 N. B. R. 161; 4 Ben. 562; Fed. Cas. 12610; In re P. H. Krogman, 5 N. B. R. 116; Fed. Cas. 7936.) The fact that the sureties on a bond are indemnified by a mortgage does not render a claim on the bond a secured claim. (In re Lloyd, 15 N. B. R. 257; 5 Amer. Law Rec. 679; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 118; Fed. Cas. 8429.) A consignor whose property is sold prior to the bankruptcy and the proceeds mingled with the general assets has no lien or specific claim against the estate and can only share it with the other creditors. (In re Coan & Ten Broeke Carriage Mfg. Co., 12 N. B. R. 203; 6 Biss. 315; 7 Chi. Leg. News, 260; Fed. Cas. 2915.) This is also true of a bailor who allows the bailee to mix the property with his own property so that they cannot be distinguished. (Adams v. Meyers, 8 N. B. R. 214; 1 Sawy. 306; Fed. Cas. 62.)

A creditor seizing property by attachment issued from a state court, within four months prior to the beginning of bankruptcy proceedings, is not a secured creditor. (In re Broich et al., 15 N. B. R. 11; 7 Biss. 303; Fed. Cas. 1921.)

Where a consignment of goods is made under a special contract in which the consignee gives his acceptance for their value, payable partly at sight and partly at a future day, and agrees to account for the whole price, to guarantee the sales and to receive a commission, with other stipulations making him primarily liable for the price of the goods, and he becomes bankrupt, the claim is merely a part of the general claims, and is not of a fiduciary character. (Ex parte Flannagans, 12 N. B. R. 230; 2 Hughes, 264; 14 Amer. Law Reg. (N. S.) 688; 4 Amer. Law Rec. 304; Fed. Cas. 4855; In re Coan & Ten Broeke Carriage Mfg. Co., 12 N. B. R. 203; 6 Biss. 315; 7 Chi. Leg. News, 260; Fed. Cas. 2915.)

Where persons place money in the hands of another to be invested in trust for their benefit and he fails to do so, but uses it in his speculations and afterwards becomes bankrupt so that the property does not remain in specie, the *cestuis que trust* must come *in pari passu* with the other creditors and prove against the trustee's estate for the amount due them. (In re Faneway, 4 N. B. R. 26; Ungewitter v. Von Sachs,

Ass., 3 N. B. R. 178; 4 Ben. 167; 1 Amer. Law T. Rep. Bankr. 224; 3 Amer. Law T. Rep. Bankr. 195; Fed. Cas. 14343.)

A depositor whose specie deposit has been appropriated by the depositor, a bankrupt, is not entitled to have the debt paid in full out of general assets, but can only share *pro rata* with other creditors. (In re King, 9 N. B. R. 140; In re Hosie, 7 N. B. R. 601; 5 Leg. Op. 89; Fed. Cas. 6711.)

See also subdivision e under this section.

**Claims provable.**—A claim for spirituous liquors sold and delivered in the original imported packages may be proved in a state where the sale of such liquors is prohibited by law (In re Town et al., 8 N. B. R. 38; Fed. Cas. 14111; In re Murray, 3 N. B. R. 187; 1 Hask. 267; Fed. Cas. 9954); there may also be proved a claim by an employee for damages for a breach of contract caused by the filing of a voluntary petition in bankruptcy by his employer (Ex parte Pollard, 17 N. B. R. 228; 2 Lowell, 411; Fed. Cas. 11252); or a loss, before final dividend, occurring upon a policy issued by a bankrupt fire insurance company (In re American Plate Glass & Fire Ins. Co., 12 N. B. R. 56; Fed. Cas. 814); or a claim if it originated in contract, even though induced by fraud and prosecuted in an action for damages, although the fraud may have to be proved to entitle the plaintiff to recover (In re Schwarz, 15 N. B. R. 330; 14 Blatch. 196; 52 How. Pr. 513; 15 Alb. Law J. 350; Fed. Cas. 12502); or a judgment in an action in tort, recovered before the petition is filed (Howland v. Carson, 16 N. B. R. 372); or a set-off which a defendant fails to prove in a suit brought by one who before trial becomes bankrupt and judgment is rendered against him (In re Safe Deposit & Savings Inst., 18 N. B. R. 493); or accrued interest (Sloan v. Lewis, 12 N. B. R. 173; 23 Wall. 150); or a claim for the purchase price of goods which were left in a vendor's warehouse and marked with vendee's mark and there destroyed by fire (Ex parte Safford et al., 15 N. B. R. 564; 2 Lowell, 563; 15 Alb. Law J. 328; 24 Pittsb. Leg. J. 159; Fed. Cas. 12212); or a debt may be proved against the estate of a principal debtor, notwithstanding a joint judgment has been recovered therefor against the principal debtor and his surety. (In re Kitsinger et al., 19 N. B. R. 152; Fed. Cas. 7861.) A joint indebtedness may be proved and set off against the estate of either of the joint debtors who may become bankrupt, without reference to the fact that it may be subject to be marshaled. (Gray v. Rollo, 9 N. B. R. 337; 18 Wall. 629.) An insurance company which re-insures its policies in another company is entitled, upon the bankruptcy of the latter, to prove the policies re-insured in full, without reference to the amount it paid the holders. (In re Republic Ins. Co., 8 N. B. R. 197; 3 Ins. Law J. 390; 5 Chi. Leg. News, 385; Fed. Cas. 11705.) A debt on which a judgment is recovered after adjudication in an action before a justice of the peace, commenced prior to the filing of the debtor's petition, is not so merged in the judgment as to prevent its proof (In re

Vickery, 3 N. B. R. 171; Fed. Cas. 16980); but the costs which accrue subsequent to filing the petition do not constitute a claim or debt existing at that time and should be excluded. (In re Crawford, 3 N. B. R. 171; 3 Amer. Law T. 169; 1 Amer. Law T. Rep. Bankr. 210; Fed. Cas. 3363.)

A wife who deposits money with her husband and receives portions thereof, leaving a balance due at the time of her husband's bankruptcy, may prove such balance as a general creditor, and her debt may not be offset by the value of reasonable gifts from the husband, or of an insurance policy on his life for the benefit of herself and the children. (In re Bigelow et al., 3 N. B. R. 170; 3 Ben. 198; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 1898; In re E. G. Blandin, 5 N. B. R. 89; 1 Lowell, 543; Fed. Cas. 1527.)

If a note taken for rent be not paid at maturity, the landlord is entitled to all his remedies for the security or collection of his claim, in the same manner as if the note had never been given. (In re Bowne & Ten Eyck, 12 N. B. R. 529; 1 N. Y. Wkly. Dig. 100; Fed. Cas. 1741.) Where premises under a lease are condemned to the use of a railroad company, and damages are paid by the company to the tenant upon the basis that his obligation to pay rent during the remainder of the term will continue, the landlord, on the bankruptcy of the tenant, will be allowed to prove the amount of the unpaid instalments of rent, at their value at the time of bankruptcy. (In re Clancy, 10 N. B. R. 215; Fed. Cas. 2782.)

Where a creditor demands payment in full in advance as a condition of consenting to sign a composition, and is held liable to repay the amount to the assignee and does so, he may prove his original claim upon failure of a composition. (Brookmire & Rankin v. Bean, Ass., 12 N. B. R. 217; 3 Dill. 186; 2 Cent. Law J. 265; Fed. Cas. 1942.)

Attorneys of a voluntary bankrupt are not entitled to payment from the assets as preferred creditors for their services in preparing the petition and schedules, but may prove their debt in the usual manner. (In re Gies, 12 N. B. R. 179; 7 Chi. Leg. News, 879; 1 N. Y. Wkly. Dig. 101; Fed. Cas. 5407.)

A railroad company whose charter provides for the forfeiture to the company of stock upon which an assessment remains unpaid may make proof against a bankrupt stockholder of the amount previously ascertained to be due for the assessment. (Gibson et al. v. Lewis, 11 N. B. R. 247; 11 Phila. 476; 32 Leg. Int. 23; Fed. Cas. 5898.)

The claim may be proved as if unsecured where a person, afterward becoming bankrupt, in order to secure goods upon credit procures a guaranty to a certain amount and goods to a larger amount are furnished. (In re Anderson, 12 N. B. R. 502; 7 Biss. 283; Fed. Cas. 350.)

Although a discharge in bankruptcy is a complete bar to a suit on a claim provable under the bankrupt law, the dismissal of the suit does not prejudice proceedings on it under that law. (Humble v. Carson, 6 N. B. R. 84.)

An agreement made by a creditor and a third party in reference to the prosecution of a claim, although it would be held champertous if either party to it were setting it up as the foundation of a suit or a defense, will not prevent the creditor from proving the claim in bankruptcy, if it be otherwise valid. (In re Lathrop et al., 8 N. B. R. 106; 8 Ben. 490; Fed. Cas. 8108.)

**Proof of commercial paper.**—Commercial paper, acquired in good faith before maturity, may be proved by the indorsee, upon showing a valuable consideration paid by him. (In re Lake Superior Ship Canal, Railroad and Iron Co., 10 N. B. R. 76; Fed. Cas. 7998.) Where it is not clearly shown that notes made by a bankrupt are accommodation paper, they may be proved; but those indorsed by the bankrupt should be proved only for the amounts the holders actually paid for them, with lawful interest. (In re Many et al., 17 N. B. R. 514; Fed. Cas. 9054.) The holder of an accommodation note is entitled to prove it in full, against the party for whose accommodation it was given, notwithstanding he has received a part of it from the maker (Ex parte Harris et al., 16 N. B. R. 432; 2 Lowell, 568; Fed. Cas. 6109); and the holder of a promissory note who has received a sum of money from an indorser in discharge of the latter's liability may nevertheless prove it in full against the estate of the bankrupt promisor, paying over to the indorser the excess of the sum due the holder. (Ex parte Talcott, 9 N. B. R. 502; 2 Lowell, 320; Fed. Cas. 13184; In re Ellerhorst & Co., 5 N. B. R. 144; 6 Amer. Law Rev. 162; Fed. Cas. 4381.) So long as both payments do not exceed the face of the note, payments made by the maker after the note has been proved against an indorser will not affect the amount due from the estate. (In re Weeks, 13 N. B. R. 263; 8 Ben. 265; Fed. Cas. 17349.) An indorser or drawer may prove on the note or bill, if he has taken it up, at any time before the final dividend. (Ex parte Talcott, 9 N. B. R. 502; 2 Lowell, 320; Fed. Cas. 13184.) A creditor who holds a debt against a bankrupt, whose liability arises from his accommodation indorsement of bills of exchange, to secure the payment of which the drawers and acceptors have given collateral security, may prove his debt as if unsecured. (In re Dunkerson & Co., 12 N. B. R. 413; 4 Biss. 253; Fed. Cas. 4157.) Where a composition is effected and approved by the court, and the debtor gives his notes to one of his creditors in renewal of notes held before the composition, and makes payment from time to time, and the debtor again becomes bankrupt, and the creditor proves the new notes, there is sufficient consideration for the claim. (In re Merriman's Estate, 18 N. B. R. 411; 44 Conn. 587; 26 Pittsb. Leg. J. 120; Fed. Cas. 9179.) Proof of a note payable "in current money of the state" in which it is made is, if not otherwise open to objection, allowable. (In re Whittaker, 4 N. B. R. 41; Fed. Cas. 17593.) Where drafts drawn by a bankrupt are accepted against consignments of merchandise which the bankrupt agreed to make but failed, and the holder receives fifty per cent. of the amount due on them, after

they are dishonored, in full for all claims against the acceptors, but without prejudice to his rights against others, and the acceptors release all claims against the bankrupt, the holder may prove against the bankrupt for the whole amount. (In re Baxter et al., 18 N. B. R. 497; 26 Pittsb. Leg. J. 140; Fed. Cas. 1120.)

**Claims not provable.**—The statutory liability of stockholders is not a provable claim (James, Adm'r, v. Atlantic Delaine Co., 11 N. B. R. 890; Fed. Cas. 7179); nor is a debt of a bankrupt contracted, either in whole or in part, in violation of a law of the state (In re Paddock, 6 N. B. R. 183; Fed. Cas. 10657); nor is a claim for rent which accrues after the filing of the petition in bankruptcy under a lease executed prior to such filing (In re May & Merwin, 9 N. B. R. 419; 7 Ben. 288; Fed. Cas. 9825); nor is a debt incurred by the loan of Confederate treasury notes (In re Milner, 1 N. B. R. 107); nor is a mere verdict in an action for a personal tort. (Black v. McClelland, 12 N. B. R. 481; 7 Chi. Leg. News, 420; 1 N. Y. Wkly. Dig. 174; Fed. Cas. 1462.) A broker who holds stock on a margin an unreasonable length of time after the buyer's bankruptcy, and then sells without notice at a loss, cannot prove for the balance. (In re Daniels, 13 N. B. R. 46; 6 Biss. 405; 1 N. Y. Wkly. Dig. 271; 8 Chi. Leg. News, 17; Fed. Cas. 8566.) A judgment obtained after the adjudication in bankruptcy creates a new debt that cannot be proved, the judgment being a merger. (In re Gallison et al., 5 N. B. R. 353; 2 Lowell, 72; Fed. Cas. 5203.) Costs of attachment proceedings pending when the petition in bankruptcy is filed are not to be reckoned among the provable debts of the debtor; nor will the costs be paid from the estate unless the proceedings are auxiliary to bankruptcy proceedings or otherwise beneficial to the estate. (In re Hatje, 12 N. B. R. 548; 6 Biss. 486; Fed. Cas. 6215.) Where a creditor holding a mortgage sells the mortgaged premises at auction for a small sum without notice to the assignee and without leave of court, he cannot prove for the balance or for any sum whatever. (In re Miller, 19 N. B. R. 78; 19 Alb. Law J. 40; 26 Pittsb. Leg. J. 175; Fed. Cas. 9555.) A lessee, under a lease which provides that, after a breach, the lessee shall remain liable for rent precisely as before, excepting such sums as are actually received for the use of the premises, cannot prove a claim for his liability under such lease in bankruptcy proceedings against a bankrupt to whom he has assigned the lease. (Ex parte Lake et al., 16 N. B. R. 497; 2 Lowell, 544; Fed. Cas. 7991.) Where a wife allows her husband to appropriate the income of her separate estate in support of the family, this does not create such a debt on his part as is provable against his estate. *Aliter*, where principal is used. (In re Jones, 9 N. B. R. 556; 6 Biss. 68; 6 Chi. Leg. News, 271; Fed. Cas. 7444.)

If there be no legal liability on the part of a bankrupt to pay a claim, notes given therefor are void for want of consideration. (In re Young, 15 N. B. R. 205; 1 Tex. Law J. 7; Fed. Cas. 18149.) A prior gift constitutes no legal consideration for a promissory note, and the claim of the holder is not provable. (In re Cornwall, 6 N. B. R. 305; 6 Amer. Law

Rev. 365; Fed. Cas. 3250.) Notes indorsed by a bankrupt cannot be proved against his estate by any one holding them without paying a valuable consideration therefor, or with notice that there was no consideration therefor, or in fraud of the bankrupt's estate. (In re Hook, 11 N. B. R. 282; Fed. Cas. 6672.) A holder of a note who has granted an extension of time to the maker cannot prove the note against the estate of a bankrupt indorser. (In re Granger & Sabin, 8 N. B. R. 30; Fed. Cas. 5684.) An indorser on a note which is protested after the maker's bankruptcy cannot prove his claim on a new note given in payment of the protested note against the estate of the bankrupt maker. (In re Montgomery, 8 N. B. R. 108; Fed. Cas. 9730.) One who, being liable as joint maker of a note, gives his individual note in payment of the joint note, it being accepted as such, discharges the old note, and it cannot be proved against the estate of the other joint maker. (In re Morrill, 8 N. B. R. 117; 2 Sawy. 356; Fed. Cas. 9821.) Where an indorser of a protested note has purchased the goods of a bankrupt, he is excluded from proving his debt as a claim against the estate of the bankrupt. (Cookingham et al. v. Morgan et al., 5 N. B. R. 16; 7 Blatchf. 480; Fed. Cas. 3183.) Where an indorser of the bankrupt's paper has become absolutely liable to the holders before the filing of the petition, by notice of dishonor, he cannot prove his claim. (In re Riker, 18 N. B. R. 393; Fed. Cas. 11833.)

Where a ward recovers a judgment against her bankrupt guardian, after institution of proceedings in bankruptcy, the claim may not be proved without leave of the bankrupt court. (In re Maybin, 15 N. B. R. 468; Fed. Cas. 9337.)

Where claims draw interest, such interest will stop at the date of filing the petition in bankruptcy. (In re Broich et al., 15 N. B. R. 11; 7 Biss. 303; Fed. Cas. 1921.)

A landlord of premises rented by a bankrupt, but which with the goods are occupied by a marshal, should apply to the court to have them vacated if he wishes to re-rent, and should not make application for allowance of rent. (In re McGrath & Hunt, 5 N. B. R. 254; 5 Den. 183; Fed. Cas. 8808.)

A railroad corporation is not liable for an injury caused by the negligence of a special receiver or assignee while operating the road. (Metz, Adm'r, etc. v. Buffalo, Corry & Pittsburgh R. R. Co., 12 N. B. R. 559.)

b. Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

[Act of 1867. SEC. 24. . . . A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.]

**The written instrument upon which the claim is founded.**—A creditor may withdraw the instrument, but not the proof of a debt. (In re Emison, 2 N. B. R. 179; 1 Chi. Leg. News, 842; Fed. Cas. 4459.) In proceedings against the estate of a deceased bankrupt, he is competent to prove the contract on which his claim is based. In re Merrill, 16 N. B. R. 85; 9 Ben. 165; 24 Pittsb. Leg. J. 205; Fed. Cas. 9466.) A promissory note in which the initials only of the first names of the parties appear, no evidence being offered as to the full Christian names, is not a sufficient basis for a claim. (In re Valentine, 12 N. B. R. 389; 4 Biss. 317; 1 N. Y. Wkly. Dig. 101; Fed. Cas. 16812.) A certificate of deposit proved as a claim is dishonored paper, and no longer has the qualities of a negotiable instrument. (In re Sime & Co., 12 N. B. R. 315; 3 Sawy. 805; Fed. Cas. 12861.)

c. Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

d. Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

[Act of 1867. SEC. 23. . . . The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers; . . .]

**The allowance or rejection of claims.**—By the receipt and filing of proof of debt the court obtains jurisdiction of the claim and of the creditor presenting it, and then only does its revising power over such proof commence. The receiving and filing of a proof of debt concludes nothing, and the power still remains in the court to revise and correct, or reject altogether. (In re Merrick, 7 N. B. R. 459; Fed. Cas. 9463.) Where

written objections are filed by the assignee to a proof of debt and a hearing is had before the register, the matter may upon request be certified to the court. (In re Clark & Bininger, 6 N. B. R. 202; Fed. Cas. 2808.) The register has no power to expunge *prima facie* proofs of debt or to reject claims, nor has he the authority to refuse the votes of the claimants, nor to exclude them from the benefit of a dividend (In re Jaycox & Green, 7 N. B. R. 303; 7 West. Jur. 18; Fed. Cas. 7240); but he has power to pass upon the validity of the proof of claims, except when an issue of law or fact is raised or contested. (In re Bogert et al., 3 N. B. R. 139; 38 How. Pr. 111; 1 Chi. Leg. News, 211; Fed. Cas. 1598.) Debts proved and filed with the register may be postponed for investigation before the assignee, and not allowed to be voted upon for assignee. (In re Frank, 5 N. B. R. 194; 5 Ben. 164; Fed. Cas. 5050.) An existing adjudication in bankruptcy precludes all inquiry touching the existence or validity of the debt of a petitioning creditor. (In re Fallon, 2 N. B. R. 92; 1 Chi. Leg. News, 107; Fed. Cas. 4628.) No person by assigning an open account can substitute another person as creditor without the express consent of the debtor. (Rollins, Ass., v. Twitchell & Co., 14 N. B. R. 201; 2 Hask. 66; 5 Amer. Law Rec. 247; Fed. Cas. 12027.)

Upon making proof, all who have valid subsisting claims at the time the bankrupt proceedings commenced will be permitted to participate in the fund so long as there is anything to distribute. (In re Maybin, 15 N. B. R. 468; Fed. Cas. 9337.)

A claimant may present a claim arising from fraud and receive his dividend, but may not prosecute it until the question of discharge is determined, but thereafter, whether the petitioner be discharged or not, it remains a valid claim against him, recoverable in any proper form of suit. (Stokes & Leonard v. Mason, 12 N. B. R. 498.)

Interest may be paid on claims proven against the bankrupt's estate from the day of filing the petition, when there are sufficient funds in the hands of the assignee to do so. (In re Hagan, 10 N. B. R. 383; Fed. Cas. 5893; In re Bousfield & Poole Mfg. Co., 17 N. B. R. 153; Fed. Cas. 1704.) Where, after the payment of all claims against a bankrupt bank at the amount computed to be due on the date of adjudication, a surplus remains, the creditors may be allowed interest from the date of adjudication to the payment of the dividends. (In re Bank of North Carolina, 12 N. B. R. 130; 1 N. Y. Weekly Dig. 127; Fed. Cas. 895; Wilson & Shafer v. Bank of North Carolina, 10 N. B. R. 289; Fed. Cas. 894.)

Claims for rent of the building in which goods of a bankrupt are kept pending sale, and the marshal's and auctioneer's fees, are allowable. (In re Peabody, 16 N. B. R. 243; 9 Chi. Leg. News, 243; Fed. Cas. 10866.)

An assignee under a state law will be allowed the amount of his disbursements made before a general assignment in bankruptcy under the Bankruptcy Act. (MacDonald, Ass., v. Moore et al., 15 N. B. R. 26; 8 Ben. 579; 1 Alb. N. C. 53; 23 Int. Rev. Rec. 25; 3 N. Y. Weekly Dig. 461; 24 Pittsb. Leg. J. 83; Fed. Cas. 8763.)



Where a person mortgages all his stock and fixtures to secure the mortgagee for all the liabilities he has assumed, and both become bankrupt, and the holders of the notes of the mortgagor indorsed by the mortgagee prove against both estates, the proceeds of the sale of the property should be divided *pro rata* among all the creditors of the mortgagor. (Ex parte Morris, 16 N. B. R. 572; 2 Lowell, 424; Fed. Cas. 9823.)

As a general rule, a sheriff's claim for costs in an attachment within four months before bankruptcy will not be allowed against the bankrupt estate (In re Jenks, 15 N. B. R. 301; Fed. Cas. 7276); nor is he entitled to fees and expenses for the attachment, levy, care and custody of property attached at the suit of creditors before bankruptcy, but upon which judgment is not rendered until thereafter. (In re Williams, 2 N. B. R. 79; 3 Amer. Law Rev. 874; 1 Amer. Law T. Rep. Bankr. 107, 118; Fed. Cas. 17705.)

Where a note is given for the insurance premium on a vessel which contains the provision that if the note be not paid at maturity the policy becomes void while it remains unpaid, and after the note becomes due the vessel strands, whereupon the note is paid, and then a gale destroys the vessel, a claim against the estate of the bankrupt insurance company for the amount of the premium will not be allowed. (Cardwell v. Insurance Co., 12 N. B. R. 253; 7 Chi. Leg. News, 282; Fed. Cas. 2396.) The claim of a holder of a fire insurance policy will not be allowed where he has not submitted to the company or its assignee proof of loss as required by the policy, nor made proof of debt in bankruptcy proceedings, nor commenced suit within a period after the loss occurred fixed by the policy. (In re Firemen's Insurance Co., 8 N. B. R. 128; 5 Chi. Leg. News, 265; Fed. Cas. 4796.)

Where a bankrupt receives property as security for indorsements and notes made by him for the benefit of the owner of the property, a holder of one of the notes is not entitled to a summary order directing payment of his claim out of the property. (Hurst v. Teft, Ass., 13 N. B. R. 108; 12 Blatchf. 217; Fed. Cas. 6939.)

The prevention of injury to the premises by not removing machinery is not a circumstance to be considered in determining the compensation to the landlord for the use of the premises by the assignee. (In re Breck & Schermerhorn, 12 N. B. R. 215; 8 Ben. 93; Fed. Cas. 1822.) Rent in arrears will not be paid in full as a preferred claim where no distress warrant has been issued under the state law prior to the petition in bankruptcy. (In re Butler, 6 N. B. R. 501; 19 Pittsb. Leg. T. 146; 3 Pittsb. Rep. 369; Fed. Cas. 2236.)

One creditor may not take part of a fund otherwise available for the payment of all creditors, and also be allowed to come in *pari passu* with other creditors in the remainder of the fund. This principle does not apply when that creditor obtains by his diligence something which did not form part of the fund. (In re Bugbee, 9 N. B. R. 258; Fed. Cas. 2115.)

The claim of a creditor who has proved his debt and had the same allowed by the register after the appointment of a trustee to wind up the bankrupt's affairs will be refused unless he applies directly to the court for its allowance. (In *re* Trowbridge, 9 N. B. R. 274; Fed. Cas. 14191.)

Where a creditor has fraudulently proved a debt against the estate, and the assignee neglects or refuses to contest it, any creditor who has proved his debt may obtain the annulment of such fraudulent proof in a court of equity. *First Nat. Bank of Troy v. Cooper et al.*, 9 N. B. R. 529; 20 Wall. 171.)

**Allowance of counsel fees.**—Where an assignee is substituted for a bankrupt in a suit, but afterward withdraws and assigns all interest to another, a claim for counsel services against the assignee will be allowed only for the period that the assignee occupies the place of the bankrupt. (In *re* Litchfield, 18 N. B. R. 347; 26 Pittsb. Leg. J. 76; Fed. Cas. 8386.) Where an assignee obtains authority from the court to employ counsel to prosecute a claim on a contingent contract for fees, but suppresses facts known to the attorneys, and which if known to the court would have prevented the giving of such authority, the contract may be set aside, but a reasonable compensation should be paid counsel for services actually rendered. (*Maybin v. Raymond, Ass.*, 15 N. B. R. 353; 4 Amer. Law T. Rep. (N. S.) 21; Fed. Cas. 9338.) Assignees under a state law cannot receive allowance for attorney's fees nor compensation for their own services where the debtor has been adjudged a bankrupt. (In *re* Colm, 6 N. B. R. 379; Fed. Cas. 2966.) A petition filed by a bankrupt after his discharge, asking that the share of attorneys under contract for contingent fees be paid them, is not a bill in equity, and a decree directing payment of such claim is not an allowance of a claim against the estate. (*Maybin v. Raymond, Ass.*, 15 N. B. R. 353; Fed. Cas. 9338.)

*e*. Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

A "secured creditor" includes a creditor who has a security for his debt upon the property of the bankrupt of a nature to be assignable under this act, or who owes such a debt for which some indorser, surety or other person, secondarily liable for the bankrupt, has such security upon the bankrupt's assets. (Sec. 1—23.) Such claims are not to be counted in computing either the number of the creditors or the amount of their claims, unless the amount of such claims exceeds the value of such securities or priorities, and then only for such excess. (Sec. 56, *b*.)

**The allowance of secured claims.**—Where the attachment is a security and the bankrupt is a mere accommodation acceptor, the creditor has a right to proceed against the bankrupt for his debt in bankruptcy and also against the other parties to the bill under his attachment, until he has received the full amount of his debt, for it is a security obtained by the creditor against other parties to the bill by a proceeding *in invitum*. (In re Cram, 1 N. B. R. 133; 1 Hask. 89; 1 Amer. Law T. Rep. Bankr. 65, 120; Fed. Cas. 3343.) The creditor who has a lien on property for the payment of his debt is admitted as a creditor only for the balance of the debt after deducting the value of such property. (In re Winn, 1 N. B. R. 131; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.)

Where a landlord takes a note to cover rent, and it is protested, and on the same day a distress warrant is issued for the rent for other months, and a few days later an assignment is made under the state law, the landlord is entitled to the payment of his claim for rent as a secured debt. (In re Bowne & Ten Eyck, 12 N. B. R. 529; 1 N. Y. Wkly. Dig. 100; Fed. Cas. 1741.) Advances made on the faith of a security presently to be given will be protected, notwithstanding changes in the condition of the borrower pending the consummation of the agreement, by actual delivery of the security. (Sparhawk et al. v. Richards et al., 12 N. B. R. 74; 1 Wkly. Notes Cas. 510; Fed. Cas. 18205.) Security for the payment of a note, by way of a deed of trust, given on the property of wife of a bankrupt, by the husband and wife jointly, is security within the meaning of the Bankrupt Act, and the claim should be allowed as secured, although the wife may have died leaving heirs; and the court will, on proper motion, attend to the application of the security and to the interests of the assignees in realty. (In re Hartel, 7 N. B. R. 559; Fed. Cas. 6157.) Where the defense is that securities were fraudulently obtained by the creditor, the burden of proof is upon the debtor to establish the fraud and the identity of the securities by a fair preponderance of evidence. (Payne et al. v. Solomon, 14 N. B. R. 162; Fed. Cas. 10856.) Where after the holder of a note signed by the bankrupt has made proof in full against the estate, an indorser secured by the bankrupt pays the amount to the holder and disposes of the security, he should give credit for the amount realized from his security and take a dividend upon the excess only of the original debt as proved. (In re Baldwin, 19 N. B. R. 52; Fed. Cas. 796.) A secured creditor is entitled to interest after the time specified for payment of the principal, by operation of law and not by any provision of the contract. (In re Bartenbach, 11 N. B. R. 61; Fed. Cas. 1068.)

Until the debt or liability of a pledged creditor is discharged, he cannot be compelled to surrender his security. (In re Buse, 8 N. B. R. 53; Fed. Cas. 2221.) Where his proof shows that his debt is secured by a mortgage on the bankrupt's homestead, he is entitled to vote on his whole claim for the choice of assignee. (In re Stillwell, 7 N. B. R. 226; Fed. Cas. 18448.) He may vote for assignee on so much of his debt as is

unsecured, where the security applies only to a specific portion of his debt. (In re Parkes et al., 10 N. B. R. 82; Fed. Cas. 10754.)

See Proof of Secured Claims, under subdivision *a* of this section.

*f*. Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

**The determination of objections to claims.**—A creditor who contests the validity of the claim of another is liable, upon the decision being adverse to him, for the taxable costs and disbursements of the creditor whose claim is contested, and the fees, costs and expenses of the referee. (In re Troy Woolen Co., 8 N. B. R. 412; Fed. Cas. 14203.) A claim which has been rejected by the assignee and returned to the register for further proof should not be ordered paid without notice to the assignee and opportunity given to answer the creditor's petition. (In re Mittledorfer & Co., 3 N. B. R. 9; Fed. Cas. 9674.) Where written objections are filed to a proof of debt with the register, he is required to certify the same to the court upon request of either party, although no proof be offered against the validity of the debt upon testimony being taken. (In re Clark & Bininger, 6 N. B. R. 202; Fed. Cas. 2808.) A creditor holding collateral security is entitled to have his claim referred to the register for investigation, and the assignee is not justified in rejecting it until proofs have been taken and the matter fully inquired into. Where the assignee moves that the claim of a creditor be rejected on the ground that he has received and sold collateral security, the claim will be referred to the register for examination and report. (In re Nounnan & Co., 6 N. B. R. 579.) A creditor is not bound, upon a mere objection to his claim, to produce such evidence thereof as would be necessary at an ordinary trial. (In re Saunders, 13 N. B. R. 164; 2 Lowell, 444; Fed. Cas. 371.)

If the other creditors and the court be fully informed of a dispute between a debtor and his creditor as to the amount that is actually owing, and of the claims of the respective parties before their final action in composition is taken, they cannot complain if, when he is called upon to pay, the debtor insists upon what he claimed were his rights in the premises. (In re Lissberger, 18 N. B. R. 230; Fed. Cas. 8334.)

The fact that the petitioning creditor and the debtor are brothers warrants the court in scrutinizing the claim closely, but not in inferring fraud from this fact alone. Objecting creditors have a right to be heard in opposition to the allowance of the claim. (In re Mendelsohn, 12 N. B. R. 533; 3 Sawy. 342; Fed. Cas. 9420.) The amount claimed by a creditor in his proof, although accepted by the creditors and the court in composition proceedings, does not conclude the debtor, who may show that it exceeds what he actually owes. (In re Lissberger, 18 N. B.

R. 230; Fed. Cas. 8384.) An order for the examination of the wife of a bankrupt will be made when a *prima facie* case is made out by affidavit that she has in her possession property which should have been surrendered to her husband's creditors, or has actively participated in any other fraud upon the statute; and when she professes to be a creditor to her husband's estate, if she offers her debt for proof, she may be fully examined in regard to it like any other creditor. (In re Gilbert, 3 N. B. R. 37; 1 Lowell, 340; Fed. Cas. 5410.) An assignee cannot object to a judgment creditor's claim on the ground that the judgment was for a debt procured by fraud on the bankrupt, and was secured by default, as such defense should have been set up at the trial when judgment was had. (Stillwell v. Walker, Ass., etc., 17 N. B. R. 569; 6 Cent. Law J. 406; Fed. Cas. 18451.)

That the debts are contingent, in case the contingency happens before the close of the bankruptcy, or that it is difficult to assess damages for a breach of a contract, are not valid objections to the proof of a claim, (Ex parte Pollard, 17 N. B. R. 228; 2 Lowell, 411; Fed. Cas. 11252.)

Where a bankrupt, within four months before bankruptcy, borrows money and gives a mortgage on his stock in trade, a prior note already secured and an overdue note which has been taken up and held by the indorser at whose request it was included in the mortgage, the mortgage may be severed and the valid part paid, notwithstanding that the stock is sold by the assignee, who holds that the mortgage is void as to the overdue note, and that as it is an entirety it is void *in toto*. (In re Stowe, 6 N. B. R. 429; Fed. Cas. 18513.)

Where application is made to expunge the proof of debt of a corporation on notes discounted for a bankrupt in its regular course of business, on the ground that the notes are not valid because the corporation is not authorized to employ its funds in discounting commercial or accommodation paper, the proof will be expunged and the claim rejected, but without prejudice to the right of the corporation to make proof of a claim for money loaned to the bankrupt. (In re Jaycox & Green, 7 N. B. R. 578; Fed. Cas. 7241.) Assignments of certificates of deposit issued by a banker before his bankruptcy, and delivered to a person as security for an antecedent debt, to be used as a set-off, coming into the hands of third persons, are not negotiable paper and no payment may be made thereon. (In re Sime & Co., 12 N. B. R. 815; 2 Sawy. 305; Fed. Cas. 12861.) Contracts for speculations in "wheat margins" are mere gaming contracts, and claims based thereon may not be proved as for money advanced for such purposes. (In re Green, 15 N. B. R. 198; 7 Biss. 388; Fed. Cas. 5751.)

Foreign judgments are only *prima facie* evidence of the debt adjudged to be due to the plaintiff, and such a judgment is open to examination, not only to show that the court was without jurisdiction of the subject-matter, but that it was fraudulently obtained. Domestic judg-

ments cannot be collaterally impeached if rendered in a court of competent jurisdiction. (*Michaels et al. v. Post, Ass.*, 12 N. B. R. 152; 21 Wall. 398.)

*g*. The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

[Act of 1867. SEC. 23. . . . Any person who, after the approval of this act shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend therefrom until he shall first have surrendered to the assignee all property, money, benefit, or advantage received by him under such preference.]

A preference is deemed to have been given where the debtor, while insolvent, has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property whereby any of his creditors would have an advantage over other creditors. (Sec. 60, *a*.)

**Preferences.**—When a security is given a creditor by the bankrupt, of his own property, the creditor is not allowed to prove his debt unless he surrenders up the security, or it is sold with his consent, when he may prove for the residue of his debt which the security when sold does not discharge. When the security is of a third person, the creditor may prove his debt without surrendering the security and may proceed to enforce his security against such person, provided he does not take from both sources more than the full amount of the debt. (*In re Cram*, 1 N. B. R. 133; 1 Hask. 89; 1 Amer. Law T. Rep. Bankr. 65, 120; Fed. Cas. 3343; *In re Forsythe & Murtha*, 7 N. B. R. 174; Fed. Cas. 4948.) Creditors having reasonable cause to believe a debtor insolvent and accepting a chattel mortgage from him to secure their debts, thereby participating in such fraud as to found a proceeding against the debtor in involuntary bankruptcy, will not be permitted to relinquish their intended preferences and claims to prove their debts. (*In re Princeton*, 1 N. B. R. 178; 2 Biss. 116; 1 Amer. Law T. Rep. Bankr. 125; Fed. Cas. 11433.) One who obtains a preference within four months, having reasonable cause to believe at the time that a fraud was intended and that the debtor was insolvent, loses both his preference and his chance to prove his debt. (*Bingham v. Richmond & Gibbs*, 6 N. B. R. 127; Fed. Cas. 1415.) Debts proved by one who has taken a mortgage to secure the same within four months of adjudication constitute a fraudulent

preference. (*Phelps v. Sterns and Same v. Dudley*, 4 N. B. R. 7; *Fed. Cas.* 11080.) One who, having reasonable cause to believe that his debtor is insolvent, receives from him an assignment of his account against a third party which the creditor collects, or goods to be applied to part payment of the debt, receives a fraudulent preference. (*In re Kingsbury et al.*, 3 N. B. R. 84; *Fed. Cas.* 7816.) One knowing a debtor to be insolvent, but who recovers judgment against him and causes execution to be issued and levy made, under which the personal property of the debtor is sold by the sheriff, accepts a preference, and may not prove his debt, and the proceeds of the sale may be ordered to be delivered to the assignee. (*In re Davidson*, 3 N. B. R. 106; 4 Ben. 10; *Fed. Cas.* 3599.) When an insolvent debtor confesses a judgment and procures and suffers his property to be taken on legal process, with intent to give a preference, the creditor by his agent knowing at the time that the debtor is insolvent, such creditor is not permitted to prove his debt when the debtor is adjudged a bankrupt within a specified time of the giving of the preference, on the petition of the creditor. (*In re Walton*, 4 N. B. R. 154; 2 *Amer. Law T.* 121; 1 *Amer. Law T. Rep. Bankr.* 162; *Fed. Cas.* 17180.)

A creditor who has accepted a conveyance the effect of which is to defeat or delay the operation of the Bankrupt Act will be excluded from participation in the election of an assignee, and proof of his claim will be postponed until after the assignee is chosen; but creditors who have only assented to such transaction after its consummation will not be deprived of their right to vote. (*In re Chamberlain & Chamberlain*, 3 N. B. R. 173; *Fed. Cas.* 2574.)

A preference will not bar the proof of a debt unless it was given and received by the parties to such debt. (*In re Comstock & Co.*, 13 N. B. R. 110; 3 *Sawy.* 320; *Fed. Cas.* 3079.)

A creditor having obtained a preference in violation of the bankrupt law cannot prove his debt after the assignee has recovered the preference. (*In re Stein*, 16 N. B. R. 569; *Fed. Cas.* 13352.)

Where one transfers property to another, who knew of the former's insolvency, in payment of a pre-existing debt, and the former at the time has no title to the property so transferred, but the latter is ignorant of the fact, he is not precluded from proving his debt in full, not having received a preference. (*In re Bousfield & Poole Mfg. Co.*, 16 N. B. R. 489; *Fed. Cas.* 1703.)

**Surrender of preference.**—Where a preference is knowingly received by a creditor, he is debarred from proving the debt thereby sought to be secured unless, previous to suit brought by the assignee to set aside the preference, he surrenders the same. (*In re Leland et al.*, 9 N. B. R. 209; 7 Ben. 156; *Fed. Cas.* 8280; *In re Scott & McCarty*, 4 N. B. R. 189; *Fed. Cas.* 12518; *In re Montgomery*, 3 N. B. R. 97; *Fed. Cas.* 9728. For *contra*, see *In re Currier*, 13 N. B. R. 63; 2 *Lowell*, 436; *Fed. Cas.* 3492.)

The prohibition of the creditor to prove his debt applies to cases where he has refused upon demand to surrender his preference and compelled the assignee by suit to recover the money or property claimed, and held by him in fraud of the provisions of the act. He may surrender his preference and prove his debt before a recovery against him by judgment, but after a recovery he is not permitted to prove. (*In re Hunt et al.*, 5 N. B. R. 483; Fed. Cas. 6882.) Repayment of a preference to a debtor cannot take the place of a surrender to the assignee. (*In re Currier*, 13 N. B. R. 68; 2 Lowell, 436; Fed. Cas. 3492.)

A full surrender of a fraudulent preference by a creditor is a complete condonation of that offense in either voluntary or involuntary proceedings. (*In re Stephens*, 6 N. B. R. 533; Fed. Cas. 13365; *In re Leland et al.*, 9 N. B. R. 209; 7 Ben. 156; Fed. Cas. 8230.)

A creditor who obtained a preference by taking goods from a debtor, and who pays a judgment obtained by the assignee in bankruptcy against them for the value of the goods, may prove his claim against the estate, there being no actual fraud, and the payment being a surrender of the preference. (*In re Newcomer*, 18 N. B. R. 85; 10 Chi. Leg. News, 347; 26 Pittsb. Leg. T. 3; Fed. Cas. 10148.) If the assignee accept the amount received by a preferred creditor after he has put in his proof, and the creditor has put in proof before the special examiner to whom the action has been referred, and dismisses his suit upon payment of costs, this constitutes a surrender, and such creditor may prove his debt. (*In re Riorden*, 14 N. B. R. 332; Fed. Cas. 11852.) If the preferred creditor surrender his preference before the entry of the judgment, but after the opinion is given, where the debt is tried before the court, he may prove his debt where there is only constructive fraud, but he may be required to pay the expenses of the assignee. But ordinarily, in respect to the right to prove a claim, it makes no difference whether a transfer claimed to be a preference is constructively fraudulent. (*Burr v. Hopkins, Ass.*, 12 N. B. R. 211; 6 Biss. 345; 7 Chi. Leg. News, 266; Fed. Cas. 2192.) A creditor who resists a suit by the assignee to recover an alleged fraudulent preference cannot prove his claim, where he is defeated in the action, though he pays the judgment recovered against him therein, such payment not being a surrender. (*In re Richter's Estate*, 4 N. B. R. 67; 3 Chi. Leg. News, 33; Fed. Cas. 11803; *In re Cramer*, 13 N. B. R. 225; 8 Chi. Leg. News, 106; Fed. Cas. 3345; *In re Tonkin et al.*, 4 N. B. R. 13; 3 Amer. Law T. 221; 1 Amer. Law T. Rep. Bankr. 232; Fed. Cas. 14094; *In re Lee*, 14 N. B. R. 89; 23 Pittsb. Leg. 196; Fed. Cas. 8179.)

An open running account for merchandise sold, consisting of various items of charges and credits on which is credited the amount at which property is purchased by way of fraudulent preference, leaving a balance which is proved against the bankrupt's estate, is but a single debt or claim, and by reason of such preference the creditor is not entitled to any dividend on any part thereof. (*In re Richter's Estate*, 4 N. B. R. 67;



3 Chi. Leg. News, 33; Fed. Cas. 11803.) But if a preferred creditor has two separate claims and receives a preference on one of them alone, he may prove the other (In re Lee, 14 N. B. R. 89; 23 Pittsb. Leg. J. 196; Fed. Cas. 8179; In re Richter's Estate, 4 N. B. R. 67; 3 Chi. Leg. News, 33; Fed. Cas. 11808; In re Arnold, 2 N. B. R. 61; Fed. Cas. 551); or if he has separate claims against the estate of a bankrupt for which he has received preferences, some of which he surrenders, he may prove claims, the security for which he has surrendered. (In re Holland, 8 N. B. R. 190; Fed. Cas. 6604.)

A creditor who is secured by a deed of trust in the nature of a preference, but who disclaims any interest thereunder, may prove his claims unsecured. (In re Saunders, 18 N. B. R. 164; 2 Lowell, 444; Fed. Cas. 12871.)

On the hearing of a petition in involuntary bankruptcy, when the debtor defendant declines to appear and defend in form, but is personally present, the court will hear a suggestion from any creditor, though it be one who is charged with receiving a fraudulent preference, that an insufficient number of creditors have joined in the petition. But in determining whether a sufficient number of creditors have joined in a petition in involuntary bankruptcy, where it is proved that a preferred creditor had reasonable cause to believe the debtor insolvent, the court will throw out of the computation the claim of the creditor so preferred, at least as to a moiety of its amount. (Clinton et al. v. Mayo, 12 N. B. R. 39; Fed. Cas. 2899.) The provision which prevents a creditor, in case of actual fraud, from proving more than a moiety of his debt applies only where there has been a recovery. (In re Riorden, 14 N. B. R. 332; Fed. Cas. 11852.)

The amount collected by a foreign creditor under his execution levied after the adjudication in bankruptcy must be accounted for to the assignee, and proof be made and dividend taken upon the original debt, without regard to the subsequent judgment thereon. (In re Bugbee, 9 N. B. R. 258; Fed. Cas. 2115.)

A register has power to postpone the proof of a claim where there are doubts as to its validity, in view of the receipt of a fraudulent preference. (In re Stevens, 4 N. B. R. 122; Fed. Cas. 13391.)

**h.** The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

**Value of securities held by creditors.**—The security that must be liquidated before the creditor can prove his debt in bankruptcy proceedings must be upon property, real or personal, of the bankrupt that may be surrendered to the assignee. A claim secured by the guaranty of a third person may be proved as if unsecured. (In re Anderson, 12 N. B. R. 502; 7 Biss. 233; Fed. Cas. 350. For *contra*, see In re Bigelow et al., 1 N. B. R. 186; 2 Ben. 480; 1 Amer. Law T. Rep. Bankr. 95; Fed. Cas. 1396.) Permission to sell securities conceded to be the property of the bankrupt will not be granted a creditor until his right to do so is shown. (In re Bigelow et al., 1 N. B. R. 186; 2 Ben. 480; 1 Amer. Law T. Rep. Bankr. 95; Fed. Cas. 1396.) He cannot sell securities to satisfy his debt before the appointment of the assignee. (In re Grinnell & Co., 9 N. B. R. 29; 7 Ben. 42; 21 Pittsb. Leg. J. 82; Fed. Cas. 5330.) Where the value thereof is agreed upon between the assignee and a creditor, and after such valuation new facts are developed to show it to have been erroneous, the court will order a new valuation to be made where justice will be manifestly furthered. (In re Newland, 9 N. B. R. 62; 7 Ben. 63; Fed. Cas. 10171.) The value of a security cannot be ascertained by the creditor's sending it to an auctioneer and having it advertised and sold at auction. (In re Hunt, 17 N. B. R. 205; 35 Leg. Int. 71; Fed. Cas. 6884.) If he has had it appraised and received a dividend on the difference between his claim and the appraised value, he can maintain an action on the security. (Streeper v. McKee, 17 N. B. R. 419.) He may prove his debt for the balance which may remain after deducting the value of the property held by him as security, to be ascertained by agreement between him and the assignee or by a sale under the direction of the court. (Stewart v. Isidor et al., 1 N. B. R. 129; In re Stewart, 1 N. B. R. 42; 1 Amer. Law T. Rep. Bankr. 16; 15 Pittsb. Leg. J. 222; Fed. Cas. 13418.) Where the security is reduced to money, the assignee is entitled to any surplus over and above the amount necessary to liquidate the debt. (In re Newland, 9 N. B. R. 62; 7 Ben. 63; Fed. Cas. 10171.) If the debtor, though insolvent, acquiesce in a sale of stocks by a secured creditor, his assignee is bound by such acquiescence, although the stocks are sacrificed; but he is not bound by the bankrupt's ratification of a sale made after the commencement of the proceedings in bankruptcy. (Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.) A creditor whose claim consists of notes and drafts for which he has no security, and a debt secured by mortgages, may be admitted as a creditor only for that part of his claim which is unsecured, and the indebtedness for which he has security must rest in abeyance until the value of the securities is ascertained. (In re Hanna, 7 N. B. R. 502; 5 Ben. 5; Fed. Cas. 6037.) Where he has a general lien, and the debtor, on receiving an advance or other accommodation from him, deposits with him a particular security to meet such advance or to cover such accommodation, the security is subject not only to a particular lien for the advance or

liability, but also to a general lien. (*Sparhawk et al. v. Drexel et al.*, 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.)

A creditor who, at the time of the bankruptcy, has in hand goods or chattels of the bankrupt with a power of sale, or chooses in action with a power of collection, may sell the goods or collect the claims and set them off against the debt the bankrupt owes him; and this, although the power to sell or to collect would have been revocable by the bankrupt before his bankruptcy, or he may retain the surplus by way of set-off on another claim which he holds against the bankrupt. (*Ex parte Whiting*, 14 N. B. R. 807; 2 Lowell, 472; Fed. Cas. 17573.)

A policy of insurance as a security is not "a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt to the creditor from the bankrupt;" but, nevertheless, the creditor must credit on the debt the present value of the security. (*In re Newland*, 7 N. B. R. 477; 6 Ben. 842; Fed. Cas. 10170.)

An application upon the part of a national bank for an order directing a sale by the bank of certain stocks belonging to a bankrupt, and which the bank claims to hold as security for the indebtedness of the bankrupt to the bank, will be denied. (*In re Bigelow et al.*, 1 N. B. R. 186; 2 Ben. 490; 1 Amer. Law T. Rep. Bankr. 95; Fed. Cas. 1896.)

i. Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

**The subrogation of another to the rights of the creditor.**—A party is entitled to be subrogated to the rights of the creditor, without any agreement to that effect, where he has been compelled to pay the debt of a bankrupt in order to protect his own rights. (*Whithed et al. v. Pillsbury et al.*, 18 N. B. R. 241; Fed. Cas. 17572.) A creditor is entitled to the benefit of the indemnity held by the surety, and can seek in equity to be subrogated to his rights, reach the security, and satisfy his debt. (*In re Stewart*, 1 N. B. R. 42; 1 Amer. Law T. Rep. Bankr. 16; 15 Pittsb. Leg. J. 222; Fed. Cas. 18818.) Sureties, indorsers and persons liable for the bankrupt are authorized to prove the debt for which they are liable when not proven by the creditor, or without first paying it, and such debts being provable are released by the discharge. (*In re Perkins et al.*, 10 N. B. R. 529; 7 Chi. Leg. News, 9; 10 Alb. Law J. 247; 20 Int. Rev. Rec. 135; 1 Cent. Law J. 507; 22 Pittsb. Leg. J. 43; Fed. Cas. 10983.)

j. Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

**Debts due the United States or a state.**—It was held under the act of 1867 that the United States was entitled to priority of payment without regard to the form of the indebtedness, and was entitled to priority although it does not prove its claim. It need not exhaust the collaterals held by it before claiming priority of payment out of a bankrupt's estate. It may file a bill in a circuit court to obtain payment out of a trust fund held by a trustee, appointed in proceedings in bankruptcy. (*Lewis, Trustee, v. United States*, 14 N. B. R. 64; 93 U. S. 618.) Its claim against a bankrupt to recover as a penalty the value of goods imported and entered contrary to law is a provable debt against the estate. (*Barnes, Ass., v. United States*, 12 N. B. R. 526; 21 Int. Rev. Rec. 212; 1 N. Y. Weekly Dig. 177; Fed. Cas. 1023.) It was also held that a state need not prove its claim in bankruptcy to recover taxes due it on property of the bankrupt, and the bankrupt law cannot compel proof of such claim, nor sell the property so subject free from the tax lien. (*Stokes v. State of Georgia*, 9 N. B. R. 191.) The state is the creditor where the bond is payable to the people of the state, though the moneys collected are to be turned into the treasury of a city thereof. (*In re Chamberlain*, 17 N. B. R. 50; 9 Ben. 149; Fed. Cas. 2580.) Where a bankrupt employs convicts from a state under a contract by the terms of which the state is to keep them under good discipline and at diligent labor, the damage sustained by the failure of the state to perform the stipulations should be deducted from the contract price in estimating the amount due the state. (*In re Southwestern Car Co.*, 19 N. B. R. 404; Fed. Cas. 13192.)

The warden of a state prison deposited money, coming into his hands as warden, in a bank upon the order of the directors, the account being kept in the name of "H. N. Smith, warden." The bank was put into bankruptcy, and the question arose as to whether the state could claim the money and so have priority over other creditors. The district court held that the state could claim, but the circuit court reversed that decision and held that the warden could prove his account as a general creditor. (*In re Corn Exchange Bank*, 15 N. B. R. 431; 7 Biss. 400; 9 Chi. Leg. News, 254; 4 Law & Eq. Rep. 29; 15 Alb. Law J. 351; Fed. Cas. 3242; reversing *In re Corn Exchange Bank*, 15 N. B. R. 216; Fed. Cas. 3243.)

k. Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

Estates of bankrupts are to be closed by the court wherever it appears that they have been fully administered. (Sec. 2—8.) Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or, if they are liquidated by litigation, and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment. (Sec. 57, n.) The right of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends, etc. (Sec. 65, c.) Whenever a composition has been confirmed or discharge granted, and it is made to appear that fraud was practiced in procuring the same, it will be revoked or set aside. (Secs. 18, 15.)

The reconsideration of allowed claims.—The moving party is entitled to open and close on the hearing of a motion to expunge a proof of claim. Where papers annexed to an answer to a petition to expunge proof are sought to be used as evidence, they must be proved in the usual manner, but the answer to the petition cannot be used as evidence. (Canby, Ass., v. McLearn, 18 N. B. R. 22; Fed. Cas. 2378.) Where proof of a claim is objected to by the assignee, but upon re-examination is sustained, the creditor will, upon motion, be held entitled to interest at the rate allowed by the laws of the state. (In re Kitzinger et al., 19 N. B. R. 238; Fed. Cas. 862.) The proper mode of presenting to the court the question of the right of secured creditors, who have offered *prima facie* proofs of debt, to participate in a dividend and vote at a creditors' meeting, is by motion of the assignee to expunge the proofs of debt. (In re Jaycox and Green, 7 N. B. R. 303; 7 West. Jur. 18; Fed. Cas. 7240.) When he files a petition for a re-examination of a proof, the creditor need only offer himself for examination, and the assignee must introduce such opposing proof as he may have. (In re Robinson, 14 N. B. R. 130; 8 Ben. 406; Fed. Cas. 11988.) Proof of a claim will not be expunged on motion of the assignee on the ground that a trustee of a bankrupt corporation has made himself liable for its debts by a false report, as the assignee does not represent the other creditors in their right to proceed against the trustee, and cannot exclude him from a share in the assets. (Bristol, Ass., v. Sanford, 13 N. B. R. 78; 12 Blatch. 341; Fed. Cas. 1898.)

The decision of a register allowing the claim of a creditor for principal and usurious interest may be re-examined, as the creditor forfeits all usurious interest, and the assignee may apply the same towards the

extinguishment of the principal debt. (In re Prescott, 9 N. B. R. 385; 5 Biss. 523; 6 Chi. Leg. News, 151; Fed. Cas. 11389.)

Where a mortgage creditor with leave of the court forecloses in a state court and proves his claim for the deficiency, the claim may be re-examined, since he has no right to prove the claim, the sale in the state court not being the proper mode for ascertaining the value of the security. (In re Herrick et al., 17 N. B. R. 335; Fed. Cas. 6421.)

Where, less than four months before the filing of the petition, the debtor assigns securities to cover an indebtedness, and suit is brought by the assignee to recover them, and the defendant then surrenders the entire amount to the assignee and proves his debt, the proof will, upon re-examination, be allowed to stand. (In re Riorden, 14 N. B. R. 332; Fed. Cas. 11852.)

Where it appears that a bankrupt has paid more usury than principal, an order authorizing the assignee to surrender to the creditor certain securities on a release of the debt secured thereby, granted *ex parte* on application by the assignee, who files an affidavit setting forth that the debt is due and amounts to more than the value of the securities, will be vacated on motion. (In re Hoole, 19 N. B. R. 477; Fed. Cas. 6673.)

*l.* Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

Provision for the declaration and payment of dividends is made in section 65.

*m.* The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

*n.* Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

Courts of bankruptcy may re-open estates whenever it appears they were closed before being fully administered. (Sec. 2—8.) Dividends remaining unclaimed for one year must be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance must be paid to the bankrupt. If, however, the unclaimed dividends belong to minors, such minors have one year after arriving at majority to claim them. (Sec. 66, b.)

**The period within which a claim may be proved.**—The statute of limitations ceases to run against the creditor of a bankrupt at the commencement of the proceedings in bankruptcy, and if not barred at that time his claim may be proved afterwards, though at the time of proof it would be otherwise barred. (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Weekly Dig. 243; Fed. Cas. 4331. For *contra*, see Nicholas, Ass., v. Murray et al., 18 N. B. R. 469; Fed. Cas. 10223.) But a debt barred by the statute of limitations of the state in which the proceedings in bankruptcy are pending is not provable against the estate of the bankrupt, and cannot be reckoned in computing the number necessary to join in an involuntary petition in bankruptcy (In re Noesen, 12 N. B. R. 423; 6 Biss. 443; 7 Chi. Leg. News, 419; 1 N. Y. Weekly Dig. 125; 2 Cent. Law J. 570; Fed. Cas. 10288; In re Doty, 16 N. B. R. 202; 10 Chi. Leg. News, 1; 25 Pittsb. Leg. J. 24; Fed. Cas. 4017), if objected to by the bankrupt or any creditor. (In re Kingsley, 1 N. B. R. 52; 1 Lowell, 216; 15 Pittsb. Leg. J. 235; Fed. Cas. 7819.) Where property is held for thirty years without a payment to a third party in trust for others, as directed by a will, there is only an implied or resulting trust, and it is barred by the statute of limitations. (In re O'Neale, 6 N. B. R. 425; Fed. Cas. 10512.)

Where a note payable in one year is, at the end of one year, taken up and a new note for the same amount and time given in exchange, and this process is repeated year after year, the debt will be deemed to have been contracted on the date of the last note. (In re Schumpert, 8 N. B. R. 415; Fed. Cas. 12491.)

A debt due from a bankrupt under an agreement made on the surrender of a lease for a term, that he would pay any deficiency arising on a reletting by the landlord, will be considered as contracted at the time of such agreement, and not at the time a judgment was obtained therefor. (In re Swift, 7 N. B. R. 591; 6 Ben. 324; Fed. Cas. 13693.)

A bankrupt indorser cannot be held on a note payable on demand, when the same is not presented for payment for four years. (In re Crawford, 5 N. B. R. 301; Fed. Cas. 3364.)

**Sec. 58. Notices to creditors.**—*a.* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of

the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

[Act of 1867. SEC. 11. . . . The judge . . . or register . . . shall issue a warrant to be signed by such judge or register, directed to the marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers, as the warrant specifies; to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the debtor's petition, or whose names may be given to him in addition by the debtor, and to give such personal or other notice to any persons concerned as the warrant specifies, which notice shall state:

First. That a warrant in bankruptcy has been issued against the estate of the debtor.

Second. That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

Third. That a meeting of the creditors of the debtor, giving the names, residences, and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than ninety days after the issuing of the same.

SEC. 17. . . . The assignee . . . shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the court.

SEC. 27. . . . In case a dividend is ordered, the register shall, within ten days after such meeting, . . . forward by mail to every creditor a statement of the dividend to which he is entitled.

SEC. 28. . . . Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account and for a discharge from all liability as assignee. . . .



SEC. 29. . . . The bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be give by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court shall designate. . . .]

Notices and orders which are not by the act or by the General Orders required to be served on the party personally may be served upon his attorney. (Orders IV.) The creditor may request that all notices to which he is entitled be sent him at any designated place, and all notices shall be so addressee until otherwise directed. (Orders XXI.) Before incurring any expense in publishing or mailing notices, indemnity may be demanded therefor of the bankrupt or the person for whom rendered. (Orders X.)

Notice must be given of the examination of the bankrupt at the first meeting of his creditors, or at such other meetings as the court shall order him to submit to an examination. (Sec. 7—9.) Notice must also be given to the trustee of his appointment. (Orders XVI.) Courts of bankruptcy are required to designate a newspaper published within their respective districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices and orders required to be published shall be inserted. For the convenience of parties in interest, additional newspapers may be designated in which they may be published. (Sec. 28.) Debts which have not been duly scheduled in time for proof and allowance, with the names of the creditors, if known to the bankrupt, are not affected by a discharge, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy. (Sec. 17—8.) Infants and insane persons without guardians, without notice of the proceedings, are given six months longer than other creditors within which to prove their claims. (Sec. 57, n.) A voluntary or involuntary petition must not be dismissed by the petitioner, or for want of prosecution, or by consent of parties, until after notice to the creditors. (Sec. 59, g.)

**Notice to creditors.**—It was held under the act of 1867, in proceedings before the register, where creditors had not been notified to be present, but their assignee was present, that they were not entitled to notice. (In re Campbell, 17 N. B. R. 4; 8 Hughes, 276; Fed. Cas. 2348.)

**Insufficient notice.**—Warrant was issued and returned by the marshal with proof of publication of the notice, but without proof of notice served by mail or personally, as required. It was held that there must be a new warrant (In re Schepeler et al., 3 N. B. R. 42; 3 Ben. 846; Fed. Cas. 12452); but the proof by affidavit of the giving of the regular notice through the mail to the creditors named in the schedule will, ordinarily, be held sufficient. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 18229.) A notice to the creditors which does not specify all the names of the several creditors and the several amounts respectively admitted to each

creditor is defective. (In re Jones, 2 N. B. R. 20; Fed. Cas. 7447.) Failure to publish notice of appointment of assignee is not cause for withholding a discharge. (In re Strachan, 3 N. B. R. 148.)

**Notice in composition.**—Upon the filing of a petition by a debtor for a composition, the court will direct the register to call a meeting of creditors and issue notice therefor (In re Spades, 13 N. B. R. 72; 6 Biss. 448; 8 Chi. Leg. News, 33; Fed. Cas. 13196); and creditors as well as the debtor should be notified of an application to set aside a composition (Ex parte Hamlin, 16 N. B. R. 320; 2 Lowell, 571; 5 Cent. Law J. 281; Fed. Cas. 5993); but where the composition agreement provides that the proceedings may be discontinued without notice to the creditors, such provision is only a waiver of notice of an application to discontinue, and the court is not bound to grant the application. (In re McNat, etc. Mfg. Co., 18 N. B. R. 388.) Where notice has been given to creditors, they are regarded as consenting to a discharge if they make no opposition. (In re Antisdel, 18 N. B. R. 289; Fed. Cas. 480.) It has been held that a bankrupt court has jurisdiction to grant a discharge, even though there may be creditors not regularly brought before it by publication and service of notice (Thurmond v. Andres et al., 13 N. B. R. 157); also it is not necessary, to give jurisdiction to the bankrupt court, that the creditors have actual notice, and the lack of it will not make the discharge invalid, if it be found that the requirements of the act were honestly complied with by the bankrupt (Rayl, Adm'x, v. Lapham, 15 N. B. R. 508); and a discharge in bankruptcy is conclusive in the absence of fraud, and cannot be impeached collaterally by a creditor to whom no notice of the proceedings had been given. (Williams v. Butcher, 12 N. B. R. 143; Heyl v. Lephen, 15 N. B. R. 508.)

**Notice in general.**—Where a discharge has been annulled on account of fraud, the decree annulling such discharge will not be vacated without notice to all parties affected. (In re Augenstein, 16 N. B. R. 252.) Where the notice of the first meeting does not reach creditors, and the court is satisfied that their votes would have changed the result, and that they did not attend through failure of the notice, on their application the meeting should be re-opened and each vote received; but, if one waits until the second meeting, he cannot have the first meeting re-assembled without good cause for the delay. (In re Spencer, 18 N. B. R. 199; Fed. Cas. 13229.) When a bankrupt amends his schedule after an assignee has been chosen, so as to include an additional creditor, it is not necessary to notify the creditors already named in such schedules before the amendment can take place or call a new meeting of creditors. (In re Carson, 5 N. B. R. 290; 5 Ben. 277; Fed. Cas. 2460.) The correctness of the schedule of creditors, or the fact whether a creditor received notice of the proceedings by creditors, does not determine the question of jurisdiction either of the proceedings or a discharge. (In re Archibrown, 11 N. B. R. 149; 7 Chi. Leg. News, 99; Fed. Cas. 505.) And also a clerical mistake in the name of a creditor, which prevented the cred-

itor from receiving a special notice, will not invalidate the proceedings against such creditor. (*Thornton v. Hogan*, 17 N. B. R. 277.)

**Notice of sales.**— Under the statute it is imperative that notice shall be given of all public sales, whether the assignee or other officer proceeds under the power given him by the statute or under an order of court. (*In re Hunter*, 18 N. B. R. 504; *Fed. Cas.* 6903.)

**Notice of accounts.**— The register should see that the assignee gives creditors notice of proceedings touching the auditing, settlement and adjournment of the assignee's accounts, and of distribution under them, and it has been held that the failure of the assignee to do so may affect the bankrupt's right to a discharge. (*In re Bushey*, 8 N. B. R. 167; 27 *Leg. Int.* 111; *Fed. Cas.* 2227.)

**Notice of compromise.**— If the court has jurisdiction over the case in bankruptcy, and the notice to creditors of the meeting to consider a proposition of compromise was properly given, the omission to make a proper and sufficient notice of the hearing to determine whether the resolution has been properly passed does not render the order ratifying the resolution void in a collateral action. (*Smith, Stebbins & Co. v. Engle et al.*, 14 N. B. R. 481.)

b. Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

[Act of 1867. **SEC. 12.** . . . That at the meeting held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required. If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.

**SEC. 14.** . . . The assignee shall immediately give notice of his appointment, by publication at least once a week for three successive weeks in such newspapers as shall for that purpose be designated by the court, due regard being had to their circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside. . . .]

See note to preceding section.

**Publication of notice.**—A failure to publish in one of the newspapers designated for the purpose, notice of the first meeting of creditors to prove their debts and choose an assignee, has been held to render all subsequent proceedings void. (In re Hall, 2 N. B. R. 68; 16 Pittsb. Leg. J. 52; Fed. Cas. 5922.)

c. All notices shall be given by the referee, unless otherwise ordered by the judge.

This same duty is imposed upon the referee by section 39, a (4).

**Sec. 59. Who may file and dismiss petitions.**—a. Any qualified person may file a petition to be adjudged a voluntary bankrupt.

[Act of 1867. SEC. 11. . . . That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition . . . the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt. . . .]

Any person who owes debts except a corporation may become a voluntary bankrupt. (Sec. 4, a.)

Upon the filing of a voluntary petition the judge must make the adjudication or dismiss the petition; if absent, the clerk must refer the case to the referee (sec. 18, g), who must make the adjudication or dismiss the petition. (Sec. 38, a.)

**In general.**—A man cannot be called upon to show cause why he shall not himself go or put anybody else into voluntary bankruptcy. (In re Harbaugh et al., 15 N. B. R. 246; 15 Alb. Law J. 194; 23 Int. Rev. Rec. 50; 24 Pittsb. Leg. J. 100; Fed. Cas. 6045.) If a debtor has committed no act of bankruptcy, and will not voluntarily petition, a creditor may sue him, so as to force him to commit an act of bankruptcy, and then himself proceed against him for such act in involuntary bankruptcy (Warren v. Bank, 7 N. B. R. 481; 10 Blatchf. 493; Fed. Cas. 17202; Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310), or by proceeding to judgment may compel him to apply to be decreed a bankrupt. (Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310.)

**Filing of second petition.**—Before the order was made setting composition aside in case of an involuntary bankrupt, the debtor filed a voluntary petition and was adjudicated bankrupt. The court held that, there being no adjudication on the first petition, it was no bar to the voluntary petition, and that the involuntary case should be stayed and proceedings continued in the other case. (In re Flanagan, 18 N. B. R. 439; 26 Pittsb. Leg. J. 128; Fed. Cas. 4850.) Where an adjudication has

been made on a voluntary petition, and a warrant has issued for the first meeting of creditors, and the matter of said petition is still pending without any discharge or discontinuance, and the bankrupt files a second petition in which the same debts and the same creditors are named, the choice of an assignee will not be made in the second proceeding pending the first, and an order will be made staying the proceedings under the second petition. (In re Wielarske, 4 N. B. R. 180; Fed. Cas. 17619.)

A voluntary bankrupt who has contracted new debts since the filing of a petition in bankruptcy under which a discharge was refused may file a new petition. (In re Drisko, 13 N. B. R. 112; 2 Lowell, 480; Fed. Cas. 4090; In re Drisco et al., 14 N. B. R. 551; Fed. Cas. 4086.)

**Partners.**—Partners may be joined in a voluntary petition in two ways—either by their own act or by the act of the partners petitioning. (In re Harbaugh et al., 15 N. B. R. 246; 15 Alb. Law J. 194; 23 Int. Rev. Rec. 50; 24 Pittsb. Leg. J. 100; Fed. Cas. 6045.) A proceeding by the petition of one of several copartners to have the copartners adjudicated bankrupts is a proceeding partly voluntary and partly involuntary; but a proceeding by the petition of all the copartners is a purely voluntary petition. (In re Penn et al., 5 N. B. R. 30; 5 Ben. 89; 3 Chi. Leg. News, 225; Fed. Cas. 10927; In re Wilson, 12 N. B. R. 253; 2 Lowell, 458; Fed. Cas. 17784.) If the names of parties who should be joined as petitioners are not so joined, the court will refuse to discharge the petitioning debtors (Citizens' Nat. Bank v. Cass et al., 18 N. B. R. 279; 6 Wkly. Notes Cas. 371; 6 Reporter, 579; 19 Alb. Law T. 119; 26 Pittsb. Leg. J. 25; Fed. Cas. 2732); but where a member of a firm who was unable to get his partners to join, filed his individual petition in bankruptcy and inserts debts of the copartnership, the schedules showing that there were no partnership assets, the court discharged him from his partnership as well as individual debts, and decided that it was not necessary to make his copartner a party to the proceedings. (In re Abbe, 2 N. B. R. 26; 7 Amer. Law Reg. (N. S.) 824; 15 Pittsb. Leg. J. 589; Fed. Cas. 4.) On the expiration of a firm the interests of all the partners were transferred to one of them by bills of sale, he agreeing to apply firm assets to payment of firm debts. Later he filed a voluntary petition in bankruptcy, and the firm assets and debts were included in his schedule. The court held that, to the end of having firm assets applied to firm debts, the other members of the firm should intervene and have the firm adjudicated bankrupt. (In re Gorham, 18 N. B. R. 419; 11 Chi. Leg. News, 58; 26 Pittsb. Leg. J. 113; Fed. Cas. 5624.) Bankrupt was adjudicated upon creditor's petition. Petition was subsequently filed by bankrupt and assignee, alleging that at time of filing creditor's petition bankrupt was member of firm which had certain debts and assets to be administered, and prayed that other members might be brought in and firm adjudicated; and the court held that it could grant relief. (In re Kelley, 19 N. B. R. 326; Fed. Cas. 7656.) For the purposes of petitioning, a partnership is to be held to exist so

long as there are outstanding debts against the firm or assets undistributed belonging to it. (Hunt, Tillinghast & Co. v. Pooke et al, 5 N. B. R. 161; Fed. Cas. 6896.)

**Revival of debt.**—The filing of the petition by a bankrupt and his including the claim of a creditor in the schedule of debts is equivalent to a new promise, so as to prevent the claim, if not already barred, from being defeated by the statute of limitations. (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Wkly. Dig. 243; In re Maybin, 15 N. B. R. 468; Fed. Cas. 9337; In re Hertzog, 18 N. B. R. 526; Fed. Cas. 6433.)

*b*. Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged bankrupt.

[Act of 1867. SEC. 39. . . . Any person . . . shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed.]

Provision is made for who may become involuntary bankrupts by section 4, *b*. A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. (Sec. 3, *b*.) Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, must be made upon the person therein named as defendant, in the same manner that service of process is now had in suits in equity in United States courts, except that it is returnable within fifteen days, unless the time is extended. Where personal service cannot be made, notice must be given by publication. (Sec. 18, *a*.) Whenever a person against whom a petition has been filed, as hereinbefore provided, takes issue with and denies the allegation of his insolvency, he must appear in court and submit to an examination. (Sec. 3, *d*.) If, on the last day within which pleadings may be filed, none are filed by the bankrupt or any of his creditors, the judge shall, on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition. (Sec. 18, *e*.) But if the judge is absent the case must be referred to the referee forth-

with (sec. 18, *f*), who must make the adjudication or dismiss the petition. (Sec. 38, *a*.) A person against whom an involuntary petition has been filed is entitled to a trial by jury in respect to the question of his insolvency, etc., unless otherwise provided. (Sec. 19, *a*.)

In general.—A proceeding in involuntary bankruptcy is not a mere suit *inter partes*, but partakes of the nature of a proceeding *in rem*, in which every creditor has a direct interest. (In re Boston H. & E. R. R. Co., 6 N. B. R. 209; 9 Blatchf. 101; 6 Amer. Law Rev. 582; Fed. Cas. 1678; Platt v. Archer, 6 N. B. R. 465; Fed. Cas. 11213.)

The running of the statute of limitations is arrested by the filing of a petition in bankruptcy. (In re Maybin, 15 N. B. R. 468; Fed. Cas. 9337.)

No creditor who has received a preference having at the time reasonable cause to believe his debtor insolvent is authorized to institute proceedings in bankruptcy. (Ecker v. McAllister, 17 N. B. R. 42.)

Where one who files a petition in bankruptcy against another is himself adjudged a bankrupt, his assignee is properly substituted as petitioner in his place. (In re Jones, 7 N. B. R. 506; Fed. Cas. 7450.) A. and B., creditors, each filed a petition in involuntary bankruptcy against C. While these proceedings were pending C. himself filed a petition in bankruptcy and was adjudged a bankrupt. A. and B. proved their claims under the voluntary petition. Held, that they thereby waived their right to continue the involuntary proceedings. (In re Noonan & Co., 6 N. B. R. 579.)

A creditor, believing his debtor to be insolvent, may sue and by proceeding to judgment compel the debtor himself to apply to be decreed a bankrupt, or if he do not, but suffers his property to be taken on legal process in such manner as gives priority to such creditor, if carried into execution, he may then allege this as an act of bankruptcy and himself demand that he be adjudged a bankrupt. (Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 8310.)

The fact that the creditors have offered to assent to a general assignment for the benefit of creditors, upon condition that the assignee be changed, will not stop them from proceeding in bankruptcy. (In re Spicer et al. v. Ward et al., 3 N. B. R. 127; Fed. Cas. 18241.)

The respondent in involuntary bankruptcy may deny that the petitioner is his creditor, may maintain such denial, and overcome the *prima facie* proofs given by the petitioner. The court must thereupon dismiss the petition. (In re Cornwell, 6 N. B. R. 805; 6 Amer. Law Rev. 365; Fed. Cas. 3250.)

The payment into court, in pursuance of a previous tender, of the amount of the petitioning creditor's claim, will not defeat the petition, where there are other creditors. (In re Williams, 3 N. B. R. 74; 1 Lowell, 406; Fed. Cas. 17703.)

More than one petition.—In case two or more petitions are filed against the same person in different districts, the first hearing must be

had in the district in which the debtor has his domicile; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction, the petition first filed must be first heard, and in each case the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard. (Orders VI.)

While proceedings are pending in one district it is improper to grant an adjudication in another, as the petition first filed takes the precedence. (In re Warren and Charles Leland, 5 N. B. R. 322; Fed. Cas. 8228.)

**Jurisdiction not affected by dissolution of corporation.**—The “dissolution” of a corporation under state insolvency laws, and the appointment of receivers, does not end its existence so as to prevent the jurisdiction of the United States bankrupt courts from attaching. (In re Independent Insurance Co., 6 N. B. R. 260; Fed. Cas. 7017.) And where a corporation was dissolved by the decree of the state court before adjudication, but after service of an order to show cause, the court held that it still existed for the purpose of the bankruptcy proceedings. (Platt v. Archer, 6 N. B. R. 465; Fed. Cas. 11213.) If adequate remedy by proceedings in equity is afforded, a court of bankruptcy will not take cognizance of a petition in behalf of such a creditor. (In re Avery v. Johann, 3 N. B. R. 36; 2 Amer. Law T. Rep. Bankr. 92; 4 N. B. R. 143; 1 Chi. Leg. News, 261; Fed. Cas. 675.)

**Petitioners.**—Petitions in bankruptcy are considered to be joint act of all joining in them. (In re Keiler, 18 N. B. R. 10; 7 Chi. Leg. News, 42; 9 West. Jur. 175; Fed. Cas. 7647.) A petition cannot be maintained by a creditor whose debt was contracted after the act of bankruptcy was committed (In re Muller et al., 3 N. B. R. 86; Deady, 515; 2 Amer. Law T. Rep. Bankr. 33; Fed. Cas. 9912), and petitioners must allege that they are creditors at the time of filing the petition (In re Western Savings & Trust Co., 17 N. B. R. 413; 4 Sawy. 190; Fed. Cas. 17442); but it is held that a person has a right to purchase, in good faith, claims against a debtor, with a view to joining in a petition in bankruptcy to make the necessary number. (In re Woodford et al., 13 N. B. R. 575; Fed. Cas. 17972.) An indorser of the bankrupt's paper who has become absolutely liable to the holders before the filing of the petition, by notice of dishonor, is not a creditor of the bankrupt at the time of the filing. (In re Riker, 18 N. B. R. 393; Fed. Cas. 11833.) In counting the number requisite, only those owning debts “provable under the act” should be considered, by which is meant those whose debts are unconditionally provable without any release or preliminary action. (In re Frost, 11 N. B. R. 69; 6 Biss. 213; 7 Chi. Leg. News, 42; Fed. Cas. 5134; In re Hunt et al., 5 N. B. R. 433; Fed. Cas. 6882.)

**Number of claims, what considered.**—In counting the number of claims of creditors, all claims must be counted irrespective of amounts. (In re Woodford & Chamberlain, 13 N. B. R. 575; Fed. Cas. 17972.) Accrued interest constitutes part of a debt provable against the estate of



the bankrupt and may be used to uphold involuntary proceedings (Sloan v. Lewis, 12 N. B. R. 173; 22 Wall. 150.) An indorser's liability on a note constitutes a debt which may be made the foundation of either voluntary or involuntary proceedings in bankruptcy. (In re Nickodemus, 3 N. B. R. 55; 2 Chi. Leg. News, 49; 16 Pittsb. Leg. J. 233; 2 Amer. Law T. 168; 1 Amer. Law T. Rep. Bankr. 140; Fed. Cas. 10254.) A creditor who was induced to release his claim without consideration through the fraudulent representations of another creditor has a debt that will support a petition in bankruptcy. (Michaels et al. v. Post, Ass., 12 N. B. R. 152; 21 Wall. 398.) A petition may be filed by a creditor against his debtor upon a claim which is not yet due, if it is provable in bankruptcy. (Linn et al. v. Smith, 4 N. B. R. 12; 3 Amer. Law T. 218; 1 Amer. Law T. Rep. Bankr. 229; Fed. Cas. 8375.) The fact that a creditor is a trustee under a voluntary assignment, unless some fraud is connected with it, is not sufficient to exclude the creditor from being counted in estimating the number of creditors necessary to join in a petition in involuntary bankruptcy. (In re Lloyd, 15 N. B. R. 257; 5 Amer. Law Rec. 679; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 113; Fed. Cas. 8429.) Proceedings in involuntary bankruptcy were instituted against one who was a partner in several different firms. The question arose as to whether firm debts were to be included in computing the number of creditors and amount of debts necessary to be represented by the petition, and the court held that both individual and firm debts must be computed. (In re Lloyd, 15 N. B. R. 257; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 113; Fed. Cas. 8429; 5 Amer. Law Rec. 679.) The state is the creditor where the bond is payable to the people of the state, though the moneys to be collected are to be turned into the treasury of a city of the state. (In re Chamberlain, 17 N. B. R. 50; 9 Ben. 149; Fed. Cas. 2580.) A petition for involuntary bankruptcy against a firm, signed by one creditor of the firm and another who is an individual creditor of a member of the firm, is sufficient. (In re Matot et al., 16 N. B. R. 485; 5 N. Y. Wkly. Dig. 529; Fed. Cas. 9282.)

It is not necessary that the larger creditors should be requested to sign petition for adjudication, and refuse. (In re Currier, 13 N. B. R. 68; 2 Lowell, 436; Fed. Cas. 3492.)

The court has authority to inquire into and determine the value of securities held by creditors of an alleged bankrupt, in order to ascertain whether the claims of the petitioning creditors are of the amount required by law. (In re Cal. Pac. R. R. Co., 11 N. B. R. 198; 3 Sawy. 240; 2 Cent. Law J. 79; Fed. Cas. 2315.)

The petition must show, with as much certainty as possible, that the creditors uniting in the petition actually constitute the number requisite under the law, and it will be dismissed where it appears to the court by affidavit or otherwise that at the time it was filed the creditors who filed it knew that they did not constitute the requisite number. (In re Scammon, 11 N. B. R. 280; 6 Biss. 195; 7 Chi. Leg. News, 42; 9 West. Jur. 175;

Fed. Cas. 12429.) But if a merchant fails to exhibit a statement of his accounts when demanded, he cannot complain of proceedings in bankruptcy commenced against him without the requisite number of creditors joining in the petition, provided a sufficient number join before the trial. The petition should contain the averment that the petitioners believe that they do constitute the requisite number and amount of provable debts which are unsecured. But that they should know such to be the fact cannot in the very nature of the case be required (*Perin & Gaff Mfg. Co. v. Peale*, 17 N. B. R. 377; Fed. Cas. 10981); and when it alleges upon belief, without charging either information or knowledge, that the petitioners constitute the requisite proportion of creditors, it was held sufficient. (*In re Mann*, 14 N. B. R. 572; 13 Blatchf. 401; Fed. Cas. 9033.) Unless the petition for adjudication contains a clear, explicit and consistent allegation as to the proportionate number of creditors petitioning and amount of debts represented by them, the court has no jurisdiction, and no amendments can be allowed. (*In re Rosenfields*, 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 583; Fed. Cas. 12061.) An allegation as to the number and amount of creditors petitioning may be amended, when the question of the acceptance of a resolution of composition is before the court, after the composition meeting. (*Ex parte Jewett*, 11 N. B. R. 443; 2 Lowell, 393; Fed. Cas. 7303.) Where a petition in bankruptcy was filed by creditors, but the requisite number did not join, and afterwards a supplemental petition was filed, in which other creditors joined, the total number being sufficient, it was held that the supplemental petition would not be dismissed because the requisite number of creditors had not joined in it. (*In re Frisbie et al.*, 15 N. B. R. 522; 14 Blatchf. 185; Fed. Cas. 5129.) It has also been held that the same proportion of creditors must join in an involuntary proceeding against a corporation as is required in case of a natural person. (*In re Leavenworth Savings Bank*, 14 N. B. R. 92; 4 Dill. 363; 3 Cent. Law J. 207; Fed. Cas. 8165.) If a petition is based on the failure of an alleged bankrupt as a manufacturer to pay its notes, but does not state that the notes were made or passed in its alleged business, the petition is defective. (*In re Capital Publishing Co.*, 18 N. B. R. 319.)

**Who excluded in computing number of creditors.**—In computing the number of creditors necessary to join in a petition, the following should be excluded: One having a debt barred by the statute of limitations of the state in which the proceedings in bankruptcy are pending. (*In re Noesen*, 12 N. B. R. 422; 6 Biss. 443; 7 Chi. Leg. News, 419; 1 N. Y. Wkly. Dig. 125; 2 Cent. Law J. 570; Fed. Cas. 10338; *In re Cromwell*, 6 N. B. R. 305; 6 Amer. Law Rev. 365; Fed. Cas. 3379.) Where an indorsee receives payment from the indorser during pendency of proceedings, he cannot unite in the petition, even though he proved his claim before payment but had not filed it. (*In re Broich et al.*, 15 N. B. R. 11; 7 Biss. 303; Fed. Cas. 1921.) A note given in the place of a lost note, if there

was no consideration for the making of the original or lost note, whether a voluntary gift, is not a sufficient claim on which to base a petition for bankruptcy proceedings. (In re Cornwall, 4 N. B. R. 184; Fed. Cas. 8251.)

**Can secured or preferred creditors be counted.**—It has been held that secured creditors or those holding liens cannot be reckoned among the creditors who constitute the requisite number to sign a petition, whose debts are unconditionally provable. (In re Frost, 11 N. B. R. 69; 6 Biss 218; 7 Chi. Leg. News, 42; Fed. Cas. 5184.) A creditor fully secured may file a petition in bankruptcy without expressly waiving his preference therein, but the better practice is to do so. (In re Stansell, 6 N. B. R. 183; Fed. Cas. 18293; In re Bloss, 4 N. B. R. 37; Fed. Cas. 1562.) But when a creditor obtained a security or lien for his claim in fraud of the Bankrupt Act, or which would be avoided if the debtor is adjudged a bankrupt, he cannot be included in computing the number and value necessary to be joined in the petition. (In re Scrafford, 15 N. B. R. 104; 4 Dill 376; 2 N. Y. Wkly. Dig. 552; 8 Month. J. 614; Fed. Cas. 12556; 3 Cent. Law J. 19.) A creditor who is secured or has a lien upon the property of his debtor, by virtue of a judgment, execution and levy, or is secured by garnishment, filing a petition for adjudication of bankruptcy, without reference to the lien or security, thereby waives and relinquishes the same, and stands before the court as an unsecured creditor. (In re Bloss, 4 N. B. R. 37; Fed. Cas. 1562; In re Broich et al., 15 N. B. R. 11; 7 Biss 303; Fed. Cas. 1921.) Objection was made to the number of debtors joining and the amounts of debts represented by them, but before hearing a secured creditor waived his security and joined, making the requisite number and amount, and it was held he had all the rights of an unsecured creditor and his course was proper. (In re Crossette et al., 17 N. B. R. 208; Fed. Cas. 3485.) It has been held that where it has been proved that a preferred creditor had reasonable cause to believe the debtor insolvent, the court will throw out of the computation the claim of the creditor so preferred, at least as to a moiety of its amount. (Clinton et al. v. Mayo, 12 N. B. R. 89; Fed. Cas. 2899.)

**Waiver of bankrupt.**—Where a decree in bankruptcy is rendered with the consent of the bankrupt, the fact that less than the requisite number and value of claims of creditors had not joined constituted an irregularity which the bankrupt might waive. (In re Williams et al., 11 N. B. R. 146; 6 Biss 283; 7 Chi. Leg. News, 49; Fed. Cas. 17700.) And although the debtor has signed a written admission that the requisite quorum has united in the petition, the court must still “be satisfied that the admission is made in good faith.” (In re Flanagan, 18 N. B. R. 439; 26 Pittsb. Leg. J. 128; Fed. Cas. 4850.)

**Counter-claim.**—Where the alleged bankrupt had a counter-claim against the petitioning creditor, being provable in bankruptcy, and such amount will reduce petitioning creditor's claim below the requisite

amount, the petition will be dismissed. (In re Osage Valley & S. K. R. Co., 9 N. B. R. 281; 1 Cent. Law J. 33; Fed. Cas. 10592.)

**Adjudication as to number and amount final.**—It has been held that an adjudication is final, and an application should not be entertained to hold such adjudication void on the ground that the requisite number and amount had not joined (In re Duncan, 14 N. B. R. 18; 8 Ben. 365; Fed. Cas. 4131); and an existing adjudication precludes all inquiry touching the existence or validity of the debt of a petitioning creditor. (In re Fallon, 2 N. B. R. 92; 1 Chi. Leg. News, 107; Fed. Cas. 4628.)

**In partnerships.**—So long as joint debts of a firm remain outstanding and unsettled, the proceedings, whether voluntary or involuntary, may be joint. (In re Williams, 3 N. B. R. 74; 1 Lowell, 406; Fed. Cas. 17703.) The court has jurisdiction of a petition filed by two members of a firm which originally consisted of three. (In re Mitchell et al., 3 N. B. R. 111; Fed. Cas. 9656.) And where the partnership is dissolved by the assignment of one member of his interest to a third person, the remaining partner was held not entitled, under the act of 1867, to maintain a petition that the original firm and each of its members be adjudged bankrupt. (In re Hartough et al., 3 N. B. R. 107; Fed. Cas. 6164.)

A petition in bankruptcy may be filed against the members of a firm which has been dissolved by mutual consent, as the rights of creditors then existing, or those who subsequently became creditors, are not affected if the members of the firm continue to treat each other as partners after the alleged dissolution, and to act as such in their business transactions with others. (In re McFarland & Co., 10 N. B. R. 381; Fed. Cas. 8788.) After dissolution of a copartnership, where there has been no settlement, one member is not entitled to an adjudication of bankruptcy against his former partners on account of claims for money or assets which had come into his hands over and above his share, or on account of obligations entered into during the continuance of the partnership, for which both are jointly liable. (In re Sigsby v. Willis, 3 N. B. R. 51; 3 Ben. 371; 1 Amer. Law T. Rep. Bankr. 171; 2 Amer. Law T. 169; Fed. Cas. 12849.) A fraudulent misappropriation of the partnership funds by one partner entitled his copartner to institute proceedings and prove his claim against the wrong-doer the same as if no partnership had existed. (In re Sigsby v. Willis, 3 N. B. R. 51; 3 Ben. 371; 1 Amer. Law T. Rep. Bankr. 171; 2 Amer. Law T. 169; Fed. Cas. 12849.) Where the several members of a firm filed several petitions, and there are firm assets, the estate of the firm is not in the bankruptcy court so as to operate as a discharge of the firm debts, even though the several petitions set out the partnership assets and liabilities, and though they have a common assignee. (In re Plumb, 17 N. B. R. 76; 9 Ben. 279; Fed. Cas. 11231.)

**Appearance on behalf of corporations.**—In ordinary cases of involuntary proceedings in bankruptcy against corporations, it is to be inferred, barring legal restrictions, that they will have power to appear by counsel,

and that the usual confidence will exist between counsel and client, and that the counsel will act within the scope of their authority (*Leiter et al. v. Payson*, 9 N. B. R. 205; 6 Chi. Leg. News, 157; Fed. Cas. 8226); and it is not necessary to give authority to counsel to appear and admit the acts of bankruptcy charged, or that the corporators or shareholders should previously by vote authorize or direct that act to be done. (*Leiter et al. v. Payson*, 9 N. B. R. 205; 6 Chi. Leg. News, 157; Fed. Cas. 8226.) A duly appointed receiver of a corporation is the proper representative of such corporation in proceedings in bankruptcy, and as such his functions are not limited by the jurisdiction of the court from which he received his appointment. (*In re Republic Insurance Co.*, 8 N. B. R. 197; 3 Ins. Law J. 390; 5 Chi. Leg. News, 285; Fed. Cas. 11705.)

**Petition is not defeated by payment into court.**—A previous tender of the amount of the petitioning creditor's claim, where there are other creditors, is not defeated by payment into court (*In re Williams*, 8 N. B. R. 74; 1 Lowell, 406; Fed. Cas. 17703); and the receipt by a creditor of part of his claim does not preclude him from petitioning to have his debtor adjudged a bankrupt, if the creditor offers to bring this payment into the registry of the court (*In re Mercer*, 6 N. B. R. 351; 29 Leg. Int. 76; Fed. Cas. 9060); but where, in answer to a petition, part payment is alleged, the petition cannot be maintained if such part payment reduces the debt below the amount required by the Bankrupt Act. (*In re Quimette*, 8 N. B. R. 140; 1 Sawy. 47; Fed. Cas. 10622.) A petitioning creditor may proceed to an adjudication, notwithstanding a tender of the full amount of his claim and costs; although, if petitioner is the only creditor, proceedings against the debtor will be dismissed upon such tender. (*In re Sheehan*, 8 N. B. R. 345; Fed. Cas. 12737.)

c. Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

All petitions and the schedules filed therewith must be printed or written out plainly, without abbreviation or interlineation, except where such may be necessary for the purpose of reference. (Orders V.)

**Contents of petition.**—Amendments to petition may be allowed on application. (Orders XL) It should set forth all facts material to the claim made by the creditor to an adjudication, as it is in the nature of pleading, so that the debtor may be distinctly apprised what he is called upon to answer. (*In re Raynor*, 7 N. B. R. 527; 11 Blatchf. 42; 1 Amer. Law Rep. 786; Fed. Cas. 11597.) It should not contain the facts relied upon to justify a warrant of arrest and seizure, nor the allegations in proof of the act of bankruptcy, which should be made on the personal knowledge of the deponent and appear in a separate deposition. (*In re Hadley*, 12 N. B. R. 366; Fed. Cas. 5894.)

**Petitions in case of a corporation.**—The petition should show that it is either a moneyed, business or commercial corporation (*In re Ore-*

gon Bulletin Printing & Publishing Co., 14 N. B. R. 405; 3 Sawy. 614; 11 Amer. Law Rev. 181; 3 Cent. Law J. 515; 14 Alb. Law J. 130; 3 Amer. Law T. Rep. (N. S.) 469; Fed. Cas. 10561); and to compel it into involuntary bankruptcy, it must be averred and proved that the corporation is either a moneyed, business or commercial corporation; that it is a banker, broker, merchant, trader, manufacturer or miner. (Alabama & Chattanooga R. R. Co. v. Jones, 5 N. B. R. 97; Fed. Cas. 126.) By appearing and answering to a petition a corporation admits that it may be proceeded against in bankruptcy, and afterwards it cannot object that it is not alleged that it is a moneyed, business or commercial corporation. (In re Oregon Bulletin Printing & Publishing Co., 13 N. B. R. 503; 1 Cin. Law Bul. 87; Fed. Cas. 10559.)

*d*. If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

*e*. In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

Consanguinity is the relation existing between persons descending from a common ancestor; affinity is the connection existing, in consequence of marriage, between the husband or wife and the kindred of the other. The degrees in either case are computed alike, thus: Counting from the bankrupt (or the husband or wife, as the case may be) up to the common ancestor and down to the party related, counting each person as one, and excluding the bankrupt (or the husband or wife, etc.).

*f.* Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

Any creditor may appear and plead to the petition within ten days after the return day or within such further time as the court may allow. (Sec. 18, *b.*)

There is nothing in the act which specifically gives a creditor appearing in opposition to the prayer of the petition the right to a jury trial as to matters of fact alleged in the petition, but under section 19, *c*, it would seem that such right would not be denied.

**Who may intervene and when.**—The service of an injunction on a person does not make him a party in interest to a bankruptcy proceeding, though he might, by petition or motion, have wrongful injunction dissolved. (*Karr v. Whittaker et al.*, 5 N. B. R. 128; *Fed. Cas.* 7612.) A general unsecured creditor is entitled to be heard in opposition to a creditor's petition for involuntary bankruptcy (*In re Austin et al.*, 16 N. B. R. 518; *Fed. Cas.* 662); but a person who is not a party to the petition, and sustains merely the relation of a person who claims to be a creditor of the debtor, cannot be permitted to interfere and defend against petition filed by other creditors to have debtor adjudged bankrupt. (*In re Boston, Hartford & Erie R. R. Co.*, 5 N. B. R. 232; *Fed. Cas.* 1679.) Any creditor other than the one petitioning that the debtor be adjudged a bankrupt can intervene at any time before adjudication and be heard upon application made to the court in behalf of such debtor (*In re Mendenhall*, 9 N. B. R. 380; 19 *Int. Rev. Rec.* 86; 6 *Chi. Leg. News*, 192; *Fed. Cas.* 9424); but a creditor has no absolute right to appear and oppose the discharge of a bankrupt after the return day of the order to show cause, though the proceedings may have been adjourned for other purposes. It is within the power of the court to permit opposition to be made at any time before the discharge is granted. (*In re Houghton*, 10 N. B. R. 887; *Fed. Cas.* 6730; *In re Olmstead*, 4 N. B. R. 71; *Fed. Cas.* 10505.) When debtors filed a denial that the proper number and amount of creditors had joined in the petition, and no reference had been made to ascertain the facts, but an entry of an order for reference appeared on the minutes of the judge, it was held that the judge was not called upon to fix a time within which additional creditors might join in the petition. (*In re Frisbie and McHugh*, 15 N. B. R. 523; 14 *Blatchf.* 185; *Fed. Cas.* 5129.) Creditors other than the petitioning creditors in bankruptcy have no standing in case of an application to annul an adjudication. (*In re Bush*, 6 N. B. R. 179; 6 *West. Jur.* 274; *Fed. Cas.* 222.)

**Intervening of attaching creditor.**—An attaching creditor may intervene to contest an adjudication upon the merits, as well as to claim

that the court has no jurisdiction of the case. (In re Williams, 14 N. B. R. 132; Fed. Cas. 17706; In re Mendelsohn, 12 N. B. R. 533; 3 Sawy. 342; Fed. Cas. 9420; In re Burton et al., 17 N. B. R. 212; 9 Ben. 324; Fed. Cas. 2214.) He may also contest the question as to the number and amount of creditors, as well as any other material fact in the case (In re Scrafford, 14 N. B. R. 184; 3 Cent. Law J. 252; Fed. Cas. 12557); and he may take advantage of any defense available to the debtor. (In re Williams, 14 N. B. R. 132; Fed. Cas. 17706.) He has a right to intervene after default of the debtor and contest the commission of the alleged act of bankruptcy. (In re Jonas, 16 N. B. R. 452; Fed. Cas. 7442.) Where a creditor has obtained an attachment after filing of petition and issue of the order to show cause, he has no right to intervene and oppose adjudication. (In re Vogel et al., 18 N. B. R. 165; Fed. Cas. 16981.)

**Intervention by partners.**—One member of a firm died and his administrators allowed the surviving partner to continue the business under the same firm name, but without any new partnership agreement. He became a bankrupt, and the court held that, in the absence of a new agreement, the administrators of the dead partner could only come in as any other creditor, the surviving partner having converted the property of his dead partner to his own use with the knowledge and consent of the administrators. (In re Mills, 11 N. B. R. 74; Fed. Cas. 9611.) Upon the return day of the order to show cause, certain creditors, not petitioning creditors, moved for leave to intervene and contest the adjudication upon the ground that the voluntary assignment was void, being executed by only three of the five partners personally and in the name of one of the partners signing as attorney in fact for the firm, and alleging that such partner had no power of attorney for that purpose; it was held that the motion must be denied, as a case of fraud or collusion had not been shown. (In re Lawrence et al., 18 N. B. R. 516; 26 Pittsb. Leg. J. 143; Fed. Cas. 8133.) A voluntary petition in bankruptcy was filed by partners, an adjudication had, and the property conveyed to an assignee. Nearly two years afterwards a creditor of the firm filed a bill alleging that two persons not named in the petition were copartners with the petitioners, and asked the court to order their joinder in the bankruptcy proceeding. Held, that the creditor could not supply the omission, but could have the same remedies against such parties as they would have had before the petition was filed. (Citizens' Nat. Bank v. Cass et al., 18 N. B. R. 279; 6 Weekly Notes Cas. 371; 6 Reporter, 579; 19 Alb. Law T. 119; 26 Pittsb. Leg. T. 25; Fed. Cas. 2732.)

*g.* A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.



Creditors must have at least ten days' notice by mail of the proposed dismissal of bankruptcy proceedings. (Sec. 58, *a.*)

**Where petitioning creditor abandons or fails to proceed.**—When a petitioning creditor abandons the proceeding, any other creditor may intervene, and on his application the court may proceed to an adjudication. Such right of intervention cannot be defeated by any arrangement between the bankrupt and any creditor, and any action of the court defeating such right of intervention is in violation of the statute. (In *re Lacy, Downs & Co.*, 10 N. B. R. 477; Fed. Cas. 7965.) The pendency of a petition to discontinue proceedings in bankruptcy, instead of depriving creditors of the right to intervene, is notice to them that the original creditor did not intend to prosecute further the matter, confers upon them the very right to intervene and prosecute. (In *re Buchanan*, 10 N. B. R. 97; Fed. Cas. 2078.) Another creditor may intervene and be permitted to prosecute the original petition where the court is satisfied that the original petitioning creditor does not intend to prosecute the matter further, and the pending application of the original creditor to discontinue the proceedings is sufficient evidence in that regard. (In *re Buchanan*, 10 N. B. R. 97; Fed. Cas. 2078.) The adjourned day on which, if the petitioning creditor does not appear and proceed to an adjudication, another creditor may appear and prosecute, is any day to which the proceedings on the order to show cause may be adjourned for the purpose of inquiring into the allegations of the acts of bankruptcy. (In *re Lacy, Downs & Co.*, 10 N. B. R. 477; Fed. Cas. 7965.) Where the petitioning creditors omit or decline to proceed, any other creditor representing more than the requisite amount of debts may continue the proceeding. (In *re Sheffer*, 17 N. B. R. 869; 4 Sawy. 868; 1 San Fran. Law J. 117; Fed. Cas. 12742.) Where a bankrupt gives a receipt and releases under seal to his assignee in a settlement out of court, and a stipulation is filed discontinuing the bankruptcy proceedings, the bankrupt court has power to set aside the stipulation on proof that it was obtained from the bankrupt by fraud, or given under a mistake of fact; but such court will not do so until the bankrupt has sought relief in a court having jurisdiction to set aside the release for fraud, or to award damages (In *re Beiler*, 7 N. B. R. 552; Fed. Cas. 1894); and the court may permit a creditor to assign his claim after having joined in the petition, even if it results in defeating the proceedings. (In *re Western Savings & Trust Co.*, 17 N. B. R. 418; 4 Sawy. 190; Fed. Cas. 17442.) If all the creditors express a desire to dismiss the proceeding, they should as a rule be allowed to do so, or creditors who have been misled by false representations will be allowed to withdraw upon discovering the truth, if the court is satisfied they were misled, (In *re Heffron*, 10 N. B. R. 218; 6 Chi. Leg. News, 358; Fed. Cas. 6821; In *re Miller*, 1 N. B. R. 105; 1 Amer. Law T. Rep. Bankr. 121; Fed. Cas. 9553.) A motion for leave to dismiss the proceedings and to settle with the debtor comes too late if filed after the debtor

has been adjudged a bankrupt. (In re Sherburne, 1 N. B. R. 155; Fed. Cas. 12758.)

**Dismissal of bankruptcy proceedings.**—The stockholders of a bankrupt corporation who have bought up all the floating debt of the corporation, except a few insignificant claims, may dismiss the proceedings and be permitted to take possession of its property and effects, upon giving security for the payment of the remaining claims. (In re Indianapolis, Cincinnati & Lafayette R. R. Co., 8 N. B. R. 302; 21 Pittsb. Leg. J. 4; Fed. Cas. 7023.) Under the act of 1867 it was held that a petitioning creditor might, at any time before adjudication, discontinue the proceedings and have his petition dismissed without notice to other creditors, who, if they desire to continue proceedings, should apply, on the day to which proceedings have been adjourned, for leave to be substituted, or file a new petition. (In re Camden Rolling Mill Co., 3 N. B. R. 146; Fed. Cas. 2338.)

**Withdrawal of creditor.**—Creditors cannot withdraw after having in good faith joined in an involuntary petition (In re Sargent, 13 N. B. R. 144; 1 N. Y. Wkly. Dig. 435; Fed. Cas. 12361; In re Rosenfields, 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 583; Fed. Cas. 12061); and permission to withdraw will be denied whenever necessary in the furtherance of the objects of the Bankrupt Act. (In re Sheffer, 17 N. B. R. 369; 4 Sawy. 363; 1 San Fran. Law J. 117; Fed. Cas. 12742.) But when his name has been signed to the petition without his knowledge, he may repudiate the proceedings and the petition will be dismissed as to him (In re Rosenfields, 11 N. B. R. 86; 3 Amer. Law Rec. 724; 1 Cent. Law J. 583; Fed. Cas. 12061); or if he join therein through misrepresentation, he may be allowed to withdraw at any time before adjudication. (In re Sargent, 13 N. B. R. 144; 1 N. Y. Wkly. Dig. 435; Fed. Cas. 12361; In re Heffron, 10 N. B. R. 213; 6 Chi. Leg. News, 358; Fed. Cas. 6321.) If, however, the misrepresentation was not substantial or intentionally false, they will not be entitled to withdraw. (In re Vogel et al., 18 N. B. R. 165; Fed. Cas. 16981.) Where one of the creditors who joined in a petition in involuntary bankruptcy sought to withdraw, alleging that he had the same right to withdraw that a plaintiff has to discontinue a suit, the court held that he could not, as the rights of his co-petitioners would have been affected. (In re Vogel et al., 18 N. B. R. 165; Fed. Cas. 16981.) A party having once appeared cannot withdraw appearance on the ground that the court has no jurisdiction, but must raise such question by demurrer. (In re Ulrich et al., 3 N. B. R. 34; 3 Ben. 355; Fed. Cas. 14327.)

**Sec. 60. Preferred creditors.**—*a*. A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and

the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. 77*Pac.* 689

See subdivision b of this section for analogous provision in the act of 1867.

More than all else, this provision is conducive of a calm and dispassionate examination by the creditors of a debtor's financial condition, before crushing out his financial existence by compulsory process. Left without the inhibition against preferences, the least suspicion of insolvency causes the diligent creditor to institute attachment proceedings, soon to be followed by an indiscriminate onslaught by other creditors, early resulting in the debtor closing his place of business. As under this law all share alike in the settlement of an estate, nothing is gained by being first in the institution of attachment proceedings, and, as a result, the debtor and his creditors are enabled to meet and counsel together, which will result in a better understanding between the two classes and have a tendency to prevent commercial failures. While the statute does not make intent an essential part of the preferences, in some instances it must exist in order to create one. (Sec. 8, a.)

It is considered an act of bankruptcy for any person to transfer, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors, or to permit or suffer a creditor to obtain a preference through legal proceedings, and not having, at least five days before a sale or final disposition of any property affected by such preference, vacated or discharged such preference. (Sec. 8, a.) A person is deemed "insolvent" whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts. (Sec. 1—15.) In connection with this, section 67, relating to "liens," should be consulted.

**When a preference constitutes fraud.**—It constitutes fraud for a debtor to give preference to a creditor within four months prior to the filing of the petition in bankruptcy, the debtor being insolvent and the creditor having reasonable cause to believe him so. (*Kohlsaat v. Hoguet et al.*, 5 N. B. R. 159; 4 Ben. 565; Fed. Cas. 7919; *In re Lewis et al.*, 2 N. B. R. 145; *Sharpe, Ass., etc. v. Philadelphia Warehouse Co.*, 19 N. B. R. 878; *Waring, Ass., v. Buchanan*, 19 N. B. R. 503; Fed. Cas. 17176; *Sedgwick, Ass., v. Place et al.*, 5 N. B. R. 168; 5 Ben. 184; 8 Chi. Leg. News, 409; 6 Amer. Law Rev. 151; Fed. Cas. 12620; *In re Tonkin & Trewartha*, 4 N. B. R. 13; 3 Amer. Law T. 231; 1 Amer. Law T. Rep. Bankr. 232; Fed. Cas. 14094; *In re Rosenfeld*, 1 N. B. R. 161; 7 Amer. Law Reg. (N. S.)

618; 1 Amer. Law T. Rep. Bankr. 81; Fed. Cas. 12058.) Pressure in making assignment to one creditor does not ameliorate the fact that it is a preference over other creditors. (In re Batchelder, 8 N. B. R. 87; 1 Lowell, 878; Fed. Cas. 1098.) Whether a preference is voluntary or involuntary, or by reason of threats or coercion, is wholly immaterial. (Strain v. Gourdin et al., 11 N. B. R. 156; 2 Woods, 880; Fed. Cas. 13521.)

There is nothing dishonest or illegal in a creditor securing a debt due him from a failing debtor. *Actual fraud* does not embrace the act of a creditor who attempts by proper and ordinary effort to secure an honest debt, which act may afterwards become a legal fraud by reason of the filing of a petition and adjudication in bankruptcy. A mere fraud on the bankrupt law by accepting a preference in violation of its provisions is not an *actual fraud*. (In re Bousfield & Poole Mfg. Co., 16 N. B. R. 489; Fed. Cas. 1703.)

**What payments are preferences.**—When a debtor's liabilities exceed his assets and he has ceased to meet his indebtedness as it falls due and has thus become in law and in fact insolvent, every payment made by him is a preference of the creditor so paid (In re Warner et al., 5 N. B. R. 414; Fed. Cas. 17177); as a payment made by a debtor who knows that he is insolvent, by procuring an order for material from a creditor for the express purpose of discharging the indebtedness (Farrin v. Crawford et al., 2 N. B. R. 181; 7 Chi. Leg. News, 343; Fed. Cas. 4686); and a payment by debtors, being insolvent and contemplating bankruptcy, is a fraudulent preference and an act of bankruptcy, notwithstanding it is made on a fiduciary debt (In re Dibble, 2 N. B. R. 185; 3 Ben. 283; 1 Chi. Leg. News, 355; Fed. Cas. 3884); also payment of rent in full by an insolvent, even to prevent the forfeiture of a valuable lease, is a technical act of bankruptcy. (In re Merchants' Ins. Co., 6 N. B. R. 43; 3 Biss. 162; 20 Pittsb. Leg. J. 32; 4 Chi. Leg. News, 73; Fed. Cas. 9441.)

If a bankrupt having a deposit with a bank which holds his note gives a check for the amount so deposited, which is credited on the note, this is a preference and is void (Traders' Nat. Bank v. Campbell, 6 N. B. R. 353; 14 Wall. 87); and payment of wages to employees, in contemplation of insolvency, is an act of bankruptcy. The preferred wages of an employee must be secured through the proceedings in bankruptcy. (In re Kenyon & Fenton, 6 N. B. R. 238.) By an arrangement between the A. bank and the B. bank, the former acted as agent for the latter for clearing-house purposes. When the A. bank found it was going to fail, it notified the B. bank, and after banking hours it paid to the B. bank the full amount of its deposits. Held, that such payment was a preference and that the amount could be recovered by the assignee in bankruptcy of the A. bank. (Phelan, Ass., v. Bank, 16 N. B. R. 308; 4 Dill. 88; 5 Cent. Law J. 351; Fed. Cas. 11069.)

Where an insolvent debtor honestly believes that he will be able to go on in his business, and with such belief pays a just debt without a design to give a preference, such payment is not fraudulent, although bank-

ruptcy should subsequently ensue. (In re Gregg, 4 N. B. R. 150; Fed. Cas. 5797; Maurer v. Frantz, 4 N. B. R. 142.) Although proceedings in bankruptcy are pending against him, a debtor who is solvent may pay any or all of his debts (In re Oregon Bulletin Printing and Publishing Co., 18 N. B. R. 508; 1 Cin. Law Bul. 87; Fed. Cas. 10559); and it is not a payment if a banker about to fail procures a certificate of deposit in another bank for the benefit of a depositor and payable to the order of said depositor, and it could not be made to relate back to the date of the certificate instead of the date of the ratification. (Strain v. Gourdin et al., 11 N. B. R. 156; 2 Woods, 880; Fed. Cas. 18521.) The proposition is untenable that a debtor ceases to be insolvent because, being unable to pay his debts in the regular course of business, his creditors have entered into an agreement to extend the time of payment of their debts, or that the payment of the debt by a party who is insolvent cannot be regarded as a preference if made with the hope and expectation by the debtor that he will be able eventually to pay all his debts in full. (Rison v. Knapp, 4 N. B. R. 114; 1 Dill. 186; Fed. Cas. 11861.)

**Payments to indorsers and sureties.**—Where the indorser of notes of bankrupts aware of their insolvency, to shield himself from loss by such indorsements, accepts money from bankrupts, such acceptance is a preference and void. (In re Ahl v. Thorner, Ass., 3 N. B. R. 29; 2 Bond, 287; 16 Pittsb. Law J. 78; 2 Amer. Law T. 104; 1 Chi. Leg. News, 387; 1 Amer. Law T. Rep. Bankr. 129; Fed. Cas. 103; In re Arnold, 2 N. B. R. 61; Fed. Cas. 551; Dutcher v. Wright, Ass., 16 N. B. R. 381; 94 U. S. 553.) The fact that securities obtained from one of his debtors by an obligor on a bond, to indemnify his sureties, were made to run directly to such sureties, does not deprive the transaction of its character as a preference, when they were obtained at the instance of the obligor. The substance rather than the form is the test with a court of equity. (Smith v. Little, 9 N. B. R. 11; 5 Biss. 490; 6 Chi. Leg. News, 86; Fed. Cas. 18072.)

**Conveyances and transfers constituting preferences.**—Any transfer of property of an insolvent debtor, made with a view to secure it or any part of it to one and thus prevent equal distribution, was held to be a transfer in fraud. (Toof v. Martin, 6 N. B. R. 49; 18 Wall. 40; Foster, Ass. v. Hackley, 2 N. B. R. 131; 2 Amer. Law T. Rep. Bankr. 8; 1 Chi. Leg. News, 187; Fed. Cas. 497; In re Rogers, 2 N. B. R. 129; 1 Chi. Leg. News, 195; Fed. Cas. 12002; In re Pierson, 10 N. B. R. 107; Fed. Cas. 11153; Barker v. Smith et al., 12 N. B. R. 474; 2 Woods, 87; 2 Amer. Law T. Rep. (N. S.) 386; Fed. Cas. 986.) So where a bank took a deed from a depositor to secure it for an amount for which the depositor's account was overdrawn, knowing that the depositor was unable to pay the overdraft, the deed was set aside as a fraudulent preference (Alderdice, Ass. v. State Bank of Virginia et al., 11 N. B. R. 398; 1 Hughes, 47; Fed. Cas. 154); and a sale of property to an indorser of a note is void where judgment has been recovered against the maker of the note, his property is held under levy and the

note has been protested. The insolvent's property cannot be taken from the jurisdiction of the bankrupt court by an arrangement between the debtor and one creditor. (*Cookingham et al. v. Morgan et al.*, 5 N. B. R. 16; 7 Blatchf. 480; Fed. Cas. 3183.) Again, a voluntary conveyance settling property upon the wife and family of the grantor will be considered fraudulent as to subsequent creditors if the grantor be indebted at the time to such an extent that the settlement will embarrass him in the payment of his debts, although the debts due may be subsequently paid in the course of business. (*Antrim v. Kelly et al.*, 4 N. B. R. 189; Fed. Cas. 494.)

The necessary effect of a conveyance to creditors in satisfaction, either in whole or in part, of a pre-existing debt, by one who knows that he is insolvent, is a preference in fraud of the Bankrupt Act (*Martin v. Toof et al.*, 4 N. B. R. 158; Fed. Cas. 9164); and if a debtor transfers property in the United States to prefer an alien creditor, the latter is liable to an action by the assignee of the bankrupt in a court of the United States (*Olcott, Ass., v. McLean et al.*, 14 N. B. R. 379); and though a writing giving a preference, signed and acknowledged as a deed more than two months before bankruptcy by a bankrupt, but recorded within that period, may be valid under the law, yet if, at the time of its being acknowledged, there was a tacit agreement between the grantor and grantee that the writing was not to be a deed passing title until the grantee should so elect, and the grantee did not make his election until a day within the period of limitation, the deed is void (*National Bank of Fredericksburg v. Conway et al.*, 14 N. B. R. 175; 1 Hughes, 37; Fed. Cas. 10037); also a sale or transfer by a bankrupt of property to his brother, who was aware of the bankrupt's insolvency, in payment of a debt due to him, although such sale and transfer was necessary to save the property from destruction, is a fraudulent preference. (*Brock v. Terrell*, 3 N. B. R. 190; 1 Chi. Leg. News, 349; Fed. Cas. 1914.)

Where a debtor in embarrassed circumstances, in consideration of property and money of his wife, which he had appropriated to his own use, conveyed his real estate to trustees for the use of his wife, giving her no power of disposition over it during her life, nor by will, without consent of the trustees, but reserving to himself and to the trustees the right to convey all or any part, without consent of his wife, the conveyance was void and the property liable for debts existing at the time of filing the petition (*Fisher v. Henderson et al.*, 8 N. B. R. 175; Fed. Cas. 4020); but a transfer of firm property from one member of the firm to another is not a fraud upon the creditors of the firm, nor does it hinder or delay them or constitute a preference contrary to the provisions of the Bankrupt Act. (*In re Munn*, 7 N. B. R. 469; 3 Biss. 442; 7 Amer. Law Rev. 751; Fed. Cas. 9925.) The fact that an assignment or transfer of goods to a creditor was made to avert a threatened attachment does not save such transaction from being an illegal preference, if such was

its effect. (In re Batchelder, 3 N. B. R. 37; 1 Lowell, 373; Fed. Cas. 1093.) A mortgage to secure a sale that contains no provisions by which the collections and proceeds of sale shall be applied to the purposes of the conveyance, or to the payment of the debt to be secured, or indemnity to be provided, or by its re-investment to augment the trust fund, the want thereof being inconsistent with the alleged purpose of the conveyance, is void as to creditors in bankruptcy. (Smith, Ass., v. McLean et al., 10 N. B. R. 260; Fed. Cas. 13074.) After a bankrupt's paper had been protested for non-payment, and a portion of his stock in trade had been seized by the government for violation of the revenue laws, he began immediately to turn over the remainder of his stock to several creditors in payment of their indebtedness. It was held that the bankrupt, at the time of such transfer, had reason to believe that he was insolvent and acted upon such belief, and that it was a fraudulent preference of such creditors. (In re Lewis et al., 2 N. B. R. 145.)

The preference at which the Bankrupt Act is aimed is not the collateral taken at the time the debt is contracted, but only arises in case of an antecedent debt. (Tiffany v. Boatman's Saving Inst., 9 N. B. R. 245; 18 Wall. 375.) A banker who sells his sight draft, and on the day following gives to the holder collateral security for its payment, thereby gives a preference to such creditor in violation of the act (Merchants' Nat. Bank of Cincinnati v. Cook et al., Trustees, 16 N. B. R. 391; 95 U. S. 342); or when a banker, according to his custom, charges his depositor in his deposit account for the notes or other obligations as they fall due, the transaction is valid only as between the banker and the depositor, but if the depositor becomes bankrupt it might constitute an unlawful preference (In re Warner et al., 5 N. B. R. 414; Fed. Cas. 7177); or if a bankrupt, being indebted to a bank and having funds there, commits forgery, and the bank, hearing of it, compels an immediate transfer of the funds to it and also attaches money of the debtor in other banks, knowing of his insolvency, the acts are preferences. (West Philadelphia Bank v. Dickson et al., Ass., 17 N. B. R. 433; 95 U. S. 180.)

A mere agreement by a debtor that in a certain event he will deliver to a bank such securities as he may purchase with the proceeds of overdrafts will not vest a title to the securities in the bank, so that a transfer of them will not be a preference. (Payne et al. v. Solomon, 14 N. B. R. 162; Fed. Cas. 10856.) A general promise of security, given at the time a debt is contracted, may not be executed after the debtor has become insolvent. Such a promise will not save the act from being a preference if it would have been one without the promise. (Ex parte Ames, 7 N. B. R. 230; 1 Lowell, 561; Fed. Cas. 323.)

Preferences by chattel mortgage or bill of sale.—A chattel mortgage which the creditor neglects to record until a few days before debtor becomes insolvent is void as against the assignee in bankruptcy. (Harvey, Ass., v. Crane, 5 N. B. R. 218; 2 Biss. 496; 3 Chi. Leg. News, 341;

Fed. Cas. 6178.) Delivery of goods under a mortgage, itself fraudulent, is a violation of the preference clause of the Bankrupt Act, and the goods cannot be held as a pledge. (*Robinson et al. v. Elliott, Ass.*, 11 N. B. R. 558; 22 Wall. 518.) Where an insolvent debtor executes a bill of sale to a creditor who has obtained the levy of an attachment after notice of the debtor's insolvency, the same is a violation of the Bankrupt Act, its inevitable effect being to give a preference. (*In re Gregg*, 4 N. B. R. 150; Fed. Cas. 5797.) If a person has the goods of another under an agreement to sell the same on shares, and, learning that the owner has become insolvent, induces the latter to execute a bill of sale of the property, the sale is void as to creditors, but the assignee acquires no greater rights than the bankrupt himself possessed, nor does the other party to the bill of sale gain or lose any rights by reason of the said bill of sale. (*Avery, Ass., v. Hackley, Ex'x*, 11 N. B. R. 241; 20 Wall. 407.) If an insolvent defendant, in an attachment suit, gives a bill of sale of the attached property to the receiptor, with the understanding that the property shall be sold and the proceeds applied toward the payment of the debt of the attaching creditor, without regard to the attachment, and without a demand perfected in execution, the bill of sale is a preference; but if the understanding was that the proceeds should be applied only upon demand duly made on execution, it is valid. (*Parsons v. Toplift*, 14 N. B. R. 547.)

**Transfers not preferences.**—A banker, holding as a special deposit certain bonds of a customer, without the latter's knowledge substituted for such bonds a note and mortgage, and upon his failure the customer ratified the act of substitution, after the banker's insolvency was notorious, and within thirty days of proceedings in bankruptcy against him. On the filing of a bill by the assignee to recover the note and mortgage, it was held that the substitution was valid, it being a mere exchange of property and not calculated in any way to prefer a creditor. (*Cook et al. v. Tullis*, 9 N. B. R. 433; 18 Wall. 322.) A debtor, before becoming bankrupt, sold certain land with the intention of giving the notes for the purchase-money to a creditor in payment of a debt. This was done, but just before the transaction a failure endangered his commercial standing. The notes were delivered and within four months he became bankrupt. It was held that the transfer was the completion of a contract made in good faith before insolvency. (*In re Wood*, 5 N. B. R. 421; Fed. Cas. 17937.) And where B. sold to F. a stock of goods in a store theretofore occupied by B., together with the fixtures, the consideration to be paid by instalments, it being agreed that, if F. defaulted in the payment of instalments, B. could treat the whole debt as due, take possession of and sell the goods in satisfaction of the amount unpaid, it was held not a preference. (*Field, Ass., v. Baker*, 11 N. B. R. 415; 12 Blatchf. 438; Fed. Cas. 4762.) Money loaned with security taken *in præsentia* does not make the security taken a preference. (*In re Morrison*, 10 N. B. R. 106; 6 Chi. Leg. News, 110; Fed. Cas. 9839.)



A debtor delivered goods to the workmen of one of his creditors, upon the creditor's credit, with the understanding that they would be paid for at the next pay day. The creditor applied the goods to the payment of a debt due from the debtor. It was held there was no preference. (*Rice et al. v. Grafton Mills*, 18 N. B. R. 209.)

If a dealer sells goods for cash, but, before the purchase is delivered to the purchaser, the latter fails, the seller has a right to the goods, and the written assent of the insolvent purchaser is not an illegal preference in fraud of the Bankrupt Act (*In re Foot et al.*, 11 N. B. R. 158; 11 Blatchf. 530; Fed. Cas. 4907); and a husband out of debt may settle upon his wife such portion of his estate as he pleases, if done in good faith, and not to defraud subsequent creditors (*In re Jones et al.*, 9 N. B. R. 556; 6 Biss. 68; 6 Chi. Leg. News, 271; Fed. Cas. 7444; *Sedgwick, Ass. v. Place et al.*, 5 N. B. R. 168; 5 Ben. 184; 3 Chi. Leg. News, 409; 4 Amer. Law T. Rep. (U. S. Cts.) 179; 6 Amer. Law Rec. 181; Fed. Cas. 12620); and where a bankrupt transferred property to his wife, to whom he was indebted, preferring her above other creditors, it was held that the transfer was valid. (*Van Kleeck, Ass., etc. v. Miller et al.*, 19 N. B. R. 484; Fed. Cas. 16860.) The return of goods which have been ordered to fill a special order, and damaged in transportation and refused by parties for whom it was designed, is not a preference nor an act of bankruptcy. (*Doan v. Compton et al.*, 2 N. B. R. 182; Fed. Cas. 3940.)

**Payments not preferences.**—Bonds and coupons of a railroad are not commercial paper within the meaning of the Bankrupt Act; and the payment of coupons of interest after suit is brought or threatened on the same is not a preference of one creditor over others (*In re Opelousa & Great Western R. R. Co.*, 8 N. B. R. 81; Fed. Cas. 10547); and advances made on the faith of a security presently to be given will be protected, notwithstanding changes in the condition of the borrower pending the consummation of the agreement, by actual delivery of the security. (*Ex parte Ames*, 7 N. B. R. 280; 1 Lowell, 561; Fed. Cas. 828; *Perrin v. Hance*, 7 N. B. R. 288; *Sparhawk et al., Ass. v. Richards et al.*, 12 N. B. R. 74; 1 Weekly Notes Cas. 510; Fed. Cas. 18205.) And if policies in an insurance company are terminated, the insured do not become creditors of the company for the unearned premium so that payment to them of such premiums constitutes such a preference as will support a petition for an adjudication in bankruptcy. (*Knickerbocker Ins. Co. v. Comstock*, 9 N. B. R. 484; 6 Chi. Leg. News, 142; Fed. Cas. 1879.) Again, the issue, at par, of stock of a company not theretofore issued, in payment of the *bona fide* debt of the company, does not operate to the prejudice of creditors or work a fraud upon them. If, however, the stock is owned by the company as paid-up stock lawfully acquired by it, it would probably be regarded as ordinary property, and if disposed of by the authorized act of the corporation to creditors under circumstances to give them an illegal preference, such act would be one of bankruptcy. (*Winter v. Rail-*

road Co., 7 N. B. R. 289; 2 Dill. 487; 6 West. Jur. 562; 5 Chi. Leg. News, 74; 6 Alb. Law J. 358; Fed. Cas. 17890.)

A payment by a debtor, knowing himself to be insolvent, of one creditor in full of his demand, in the absence of proof that the debtor contemplated bankruptcy, or that the creditor had reason to believe that a fraud on the act was intended, is not a fraudulent preference; and where a debtor, knowing himself to be insolvent, settles with as many of his creditors as will accept his offers, and afterwards applies his earnings to the payment of his current expenses and occasional payments on his old debts, such acts do not constitute a fraudulent preference. (In re Locke, 2 N. B. B. 123; 1 Lowell, 293; Fed. Cas. 8439.) A bankrupt was indebted to a bank on a note for \$4,000 and had a deposit account with the bank to the amount of \$4,500. Just before institution of proceedings in bankruptcy, knowing the insolvency of the bankrupt, one day prior to the maturity of the note the bank took the maker's check for \$4,000 and delivered to him the note. Such act was only the adjustment of mutual debts and not a fraudulent preference. (Robinson, Ass., v. Insurance Co., 18 N. B. R. 243; Fed. Cas. 11969.) Payments to the government, although with intent to give a preference, were not forbidden by the Bankrupt Act of 1867. (Tiffany et al., Ass., v. Morrison, 18 N. B. R. 365.)

After the lapse of four months from the date of the conveyance, simple preferences of a *bona fide* creditor by an insolvent debtor, not otherwise fraudulent, are to be held valid so far as the preferred creditor is concerned. (In re Dow, 6 N. B. R. 10; Fed. Cas. 4036.)

**When mortgage not a preference.**—A mortgage executed in pursuance of a parol contract that the mortgage should be given when requested by the creditor, although within four months of institution of proceedings in bankruptcy, is not a preference within the meaning of the act (Hewitt et al. v. Northup et al., 16 N. B. R. 27; Sawyer & Frazier v. Turpin et al., 13 N. B. R. 271; 91 U. S. 114); and a creditor who takes a bill of sale of property purchased with money furnished by him is not giving a preference where such bill of sale does not include more than he was entitled to (In re Bousfield & Poole Mfg. Co., 16 N. B. R. 489; Fed. Cas. 1703); nor is a mortgage a preference where the debt is secured by a prior mortgage covering goods subsequently acquired, if both mortgages cover the same goods; but, if they do not cover the same goods, the former is liable to be set aside as a preference as to all goods not included in the latter. (Brett v. Carter, 14 N. B. R. 301; 2 Lowell, 458; 2 N. Y. Wkly. Dig. 331; 22 Int. Rev. Rec. 152; 3 Cent. Law J. 286; 13 Alb. Law J. 361; 10 Amer. Law Rev. 600; Fed. Cas. 1844.)

A chattel mortgage given for a present consideration and good between the parties is not rendered invalid as against the assignee by failure to file the same or take possession of the property until a month before the commencement of proceedings in bankruptcy, notwithstand-

ing the mortgagee knew the mortgagor to be insolvent and that the instrument gave him a preference (In re Barman et al., 14 N. B. R. 125; 3 N. Y. Wkly. Dig. 111; Fed. Cas. 999); and execution of a bill of sale by a broker of a portion of his property to a customer to avoid an action for an unlawful conversion of the proceeds of a sale is not a fraudulent preference (In re Jenkins, Ass., v. Mayer, 3 N. B. R. 189; 2 Biss. 303; Fed. Cas. 7272); and a mortgage executed by a debtor before becoming insolvent, and not in contemplation of bankruptcy, to secure to a creditor the payment of a debt previously contracted, although made with the intent to prefer said creditor, was not prohibited by the act of 1867. (Welch v. Dunham, 2 N. B. R. 9; 2 Ben. 488; 1 Amer. Law T. Rep. Bankr. 89; Fed. Cas. 4143.) Where a mortgage given by an insolvent was recorded the day before the petition in bankruptcy was filed, and the evidence showed that the consideration did not pass until the mortgage was recorded, the transaction was in good faith and the mortgage was not for a past consideration. (In re Westcott et al., 7 N. B. R. 285; 6 Ben. 135; Fed. Cas. 17430.) For a loan of money to an insolvent, the mere giving of a security is not a preference under the Bankrupt Act. (Clark v. Iselin et al., 9 N. B. R. 19; 10 Blatchf. 204; 21 Pittsb. Leg. J. 82; Fed. Cas. 2325.)

**Exchange of securities not a preference.**—Giving a deed of trust upon property to secure a debt previously secured by a mechanic's lien is merely a change of securities and not a fraudulent preference given to the lien holder (In re Weaver, 9 N. B. R. 132; Fed. Cas. 17307); and the exchanging of new secured notes for old secured notes within four months of bankruptcy does not withdraw any property from the debtor's estate and does not constitute a preference (Bernhisel v. Firman, Ass., 11 N. B. R. 505; 23 Wall. 170); also where a security by way of mortgage is given more than four months before bankruptcy, a change in the substance of the deeds made within four months of the bankruptcy will be protected if no greater value were put into the creditors' hands. (Sawyer et al. v. Turpin et al., 5 N. B. R. 339; 2 Lowell, 29; Fed. Cas. 12410.) Within four months preceding bankruptcy the lessor of a hotel, holding as security for rent chattel mortgages good between parties but void as to creditors, released the same upon receiving real estate in payment of the rent. The court held that the transaction, being an exchange of securities in good faith, was valid. (Stewart v. Platt, Ass., etc., 19 N. B. R. 347; 101 U. S. 731.) But if a bankrupt gives a creditor new securities of much greater value, and the means of obtaining, by judgment and levy, a lien on property with intent to prefer him, the rule that exchange of securities is not a preference does not apply. (Waring, Ass., etc. v. Buchanan et al., 19 N. B. R. 502; Fed. Cas. 17176.)

**Judgments procured and suffered.**—Notes with *cognovit* to confess judgment thereon by an insolvent debtor to a creditor who had refused

him further credit, and a few days later caused judgment to be entered and execution issued thereon, constitute an unlawful and fraudulent preference of such creditor (*Haughey, Ass. v. Albin*, 2 N. B. R. 129; 2 Bond, 244; 2 Amer. Law T. Rep. Bankr. 47; Fed. Cas. 6222; *Fitch v. McGie*, 2 N. B. R. 164; 2 Amer. Law T. Rep. Bankr. 80; Fed. Cas. 4835; *In re Terry & Cleaver*, 4 N. B. R. 38; 3 Chi. Leg. News, 106; Fed. Cas. 13835); and where a debtor has given a judgment note to one of his creditors who has taken judgment on the note and so obtained a preference, it is wholly immaterial whether the course pursued by the judgment creditors in entering the judgment and issuing execution was expected or unexpected to the debtor, as he gave the creditor power to do what he did in spite of every opposition which he could make. (*First Nat. Bank of Clarion v. Jones, Ass.*, 11 N. B. R. 38; 21 Wall. 325.) Where warrants were held by near relatives of bankrupt, and he had stated to creditors that they could make nothing by pushing him, as his relatives had judgments and he should protect them first, and then his relatives entered their judgments and issued executions thereon immediately on learning bankrupt's condition, the executions were procured by bankrupt, and therefore a preference. (*Shimer, Ass. v. Huber et al.*, 19 N. B. R. 414; 14 Phila. 402; 36 Leg. Int. 339; 8 Reporter, 393; Fed. Cas. 12787; *Rogers, Ass., etc. v. Palmer*, 19 N. B. R. 471; 102 U. S. 563; *Zahm v. Fry et al.*, 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155; Fed. Cas. 18198; *In re Dibble*, 2 N. B. R. 185; 3 Ben. 203; 1 Chi. Leg. News, 355; Fed. Cas. 3884.) The giving of a note by an insolvent debtor and causing it to be sued upon to prevent an attachment by the payee is a procuring, by such debtor, of his property to be taken on legal process with intent to give a preference (*In re Williams*, 3 N. B. R. 74; 1 Lowell, 406; Fed. Cas. 17703); and a bankrupt who gives new notes signed by himself alone, in exchange for other notes secured by the signature and indorsement of parties toward whom he and the payee are friendly, and adds to his stock goods bought on credit from parties who are ignorant of his insolvency, procures the execution which is issued against him on judgment recovered on such notes, within the meaning of the law (*Sage, Jr., v. Wynkoop*, 16 N. B. R. 363; § 5123, R. S.; Fed. Cas. 12215); also, if a debtor confesses a judgment within four months previous to the filing of the petition against him, being at the time insolvent, and the creditor having reason to believe him so, though there was as a consideration a pre-existing debt, it is in fraud of the Bankrupt Act. (*Vogel v. Lathrop*, 4 N. B. R. 146; 18 Pittsb. Leg. J. 106; Fed. Cas. 16985.)

Where a creditor had been renewing a note, and finally entered judgment by virtue of a warrant of attorney attached, and issued execution several days after the debtor had absconded, but just prior to his being adjudicated bankrupt, on petition of trustees, a decree was entered for the amount of the execution with interest. (*Golson et al. v. Neihoff et al.*

5 N. B. R. 56; 2 Biss. 434; Fed. Cas. 5524; In re Herpich, 15 N. B. R. 426; 7 Biss. 397; 9 Chi. Leg. News, 252; 4 Law & Eq. Rep. 29; Fed. Cas. 6418.) The confession of a judgment, the issuing of an execution, and a seizure and sale of property under it, constitute an indirect transfer of such property by the debtor. (Zahn v. Fry et al., 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155; Fed. Cas. 18198; Catlin v. Hoffman, 9 N. B. R. 343; 2 Sawy. 496; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521; Webb, Ass., v. Sachs et al., 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17325.) Where a state ordinance gave a preference to new debts over old, and a father gave to his son a new note to take the place of an old one, and thereon judgment was procured, and within four months thereafter a petition in bankruptcy was filed against the father, the transaction constituted a preference (Little, Ass., v. Alexander, 12 N. B. R. 134; 21 Wall. 500); and a confession of judgment entered prior to June 1, 1867, but after the approval of the Bankrupt Act, March 2, 1867, was held to be a fraudulent preference, if both parties knew of the debtor's insolvency. (Traders' Nat. Bank v. Campbell, 6 N. B. R. 352; 14 Wall. 87.)

Judgments whereby a creditor of an insolvent obtains an illegal preference are voidable, but not void *per se* (Zahn v. Fry et al., 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155; Fed. Cas. 18198); but where circumstantial evidence shows that a suit, apparently antagonistic, is collusive, the debtor being at the time insolvent, and the creditor having reasonable cause to believe him so, the judgment lien thus created will be void. (In re Baker, 14 N. B. R. 433; 14 Alb. Law J. 294; Fed. Cas. 768; Shaffer v. Fritchery & Thomas, 4 N. B. R. 179; Fed. Cas. 12697.) Where a creditor placed his claim in the hands of a collection agent, who forwarded it to a firm in the city where the debtor resided, and said firm, knowing of the insolvency of the debtor, induced him to confess judgment for the debt, whereby the amount of the debt was collected and forwarded to the collection agent, suit was brought by the assignee of the bankrupt to recover the money, and judgment given for the plaintiff. (Hoover, Ass., etc. v. Wise et al., 14 N. B. R. 264; 91 U. S. 308.)

Where a preference is obtained through a judgment and a levy of execution, an assignee in bankruptcy may proceed by suit in equity to set aside the lien, and may make the sheriff, as well as the creditor, a party, if the proceeds of the execution be still in the hands of the sheriff (Warren v. Tenth Nat. Bank et al., 7 N. B. R. 481; 10 Blatchf. 493; Fed. Cas. 17303); and mere non-resistance of a debtor to judicial proceedings against him when the debt is due and there is no valid defense to it is not suffering and giving a preference under the Bankrupt Act. (Tenth Nat. Bank of New York City et al. v. Warren et al., Ass., 17 N. B. R. 75; 96 U. S. 539.)

Non-resistance of debtor.—Provided the debtor does nothing to aid him, a creditor may pursue his insolvent debtor to judgment and execu-

tion, with knowledge of the insolvency, notwithstanding the provisions of the Bankrupt Act. (Clark, *Assa*, v. Iselin, 11 N. B. R. 337; 21 Wall. 360.) Where an actual intent to give a preference is negated, mere honest inaction on the part of an insolvent debtor who is sued on a just debt, and who allows judgment to go against him, and his property to be levied on, is not an act of bankruptcy (Wright v. Filley, 4 N. B. R. 197; 5 West. Jur. 212; Fed. Cas. 18077); and the burden of proof is on the creditor to show that the debtor suffered or procured his property to be taken on legal process with intent thereby to give a preference (In re King, 10 N. B. R. 103; Fed. Cas. 7783); though it has been held that passive acquiescence in the seizure of his property on execution by an insolvent debtor, when he could prevent it by going into voluntary bankruptcy, is suffering it to be taken with intent to give a preference, and the act is therefore void (In re Lord, 5 N. B. R. 318; Fed. Cas. 8503; Vogle v. Lathrop, 4 N. B. R. 146; 18 Pittsb. Leg. J. 106; Fed. Cas. 16985; Beattie v. Gardner et al., 4 N. B. R. 106; Fed. Cas. 1195); and that the act of suffering a creditor to take possession of property, the debtor being insolvent, when the taking could have been prevented by application in involuntary bankruptcy, constitutes fraud (Haskell, *Ass.*, etc. v. Ingalls, 5 N. B. R. 200; 1 Hask. 341; Fed. Cas. 6193); and again, that allowing judgment to go by default amounts to suffering goods to be taken in execution, when taken under the judgment. Giving under pressure a warrant of attorney to confess a judgment, under which goods are taken on execution, is not procuring, but is suffering the goods to be taken on execution (In re Croft, 1 N. B. R. 89; 2 Ben. 214; Fed. Cas. 3316; In re Black et al., 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457; In re Lord, 5 N. B. R. 318; Fed. Cas. 8503); and that it is the duty of an insolvent debtor to apply to the bankrupt court in his own behalf, and if he does not, and his property is taken by legal process by some of his creditors, he will be held to have suffered his property to be taken on legal process, with intent to prefer such creditors and defeat the operation of the Bankrupt Act (In re Wells, 3 N. B. R. 95; 2 Chi. Leg. News, 49; Fed. Cas. 17388); and the taking of property by a receiver appointed by a state court is a taking under legal process within the meaning of the bankrupt law. (Hardy et al. v. Clark & Binger, 3 N. B. R. 99; 3 Amer. Law T. Rep. Bankr. 11; 17 Pittsb. Leg. J. 61; 2 Chi. Leg. News, 121; 1 Amer. Law T. Rep. Bankr. 151; 7 Blatchf. 262; Fed. Cas. 6058.)

**Judgments that are valid.**—The fact that a judgment was entered upon a warrant of attorney does not invalidate the lien, if the creditor did not know of the failing circumstances of the debtor, and if it was not entered up “in contemplation of bankruptcy or insolvency” (In re Weeks, 4 N. B. R. 116; Fed. Cas. 17350); and where a judgment note is taken within four months of proceedings in bankruptcy for a loan made at the time by one who had no knowledge of the debtor’s insolvency,

though he knew him to be so at the time of entering judgment, the judgment was held valid (*Vogle v. Lathrop*, 4 N. B. R. 146; 8 Pittsb. Rep. 269; 18 Pittsb. Leg. J. 106; Fed. Cas. 16985); also a lien obtained by a creditor within four months preceding the commencement of bankruptcy proceedings, the debtor at the time being insolvent, and the creditor cognizant of such fact, is not prohibited, if it affirmatively appears that the bankrupt did not assist the creditor to obtain the same (*Britton v. Payen et al.*, 9 N. B. R. 445; 7 Ben. 219; Fed. Cas. 1906); and it has been held that if a creditor realizes his money under judgment entered in an attachment suit without collusion, he may retain it, although the attachment was issued within four months before the commencement of the proceedings in bankruptcy. (*Henkelman, Jackson & Phelps v. Smith, Ass.*, 12 N. B. R. 121.) When, in accordance with the terms of a lease, a distress is levied within four months prior to bankruptcy, the bankrupt consenting to it, and collusion is not shown, such distress is not fraudulent. (*Goodwin et al. v. Sharkey et al.*, 15 N. B. R. 526.) A sale on execution under a judgment by a creditor within four months of the filing of a petition in bankruptcy does not constitute a fraudulent preference if the debtor is compromising his debts and the creditor has no reason to believe himself to be obtaining a preference over other creditors. (*Warren & Rowe, Ass. v. Tenth Nat. Bank et al.*, 5 N. B. R. 479; 5 Ben. 395; 43 How. Pr. 169; Fed. Cas. 17200.) A sale of the property of a bankrupt under an execution upon a judgment rendered before the adjudication in bankruptcy was held valid, although the judgment creditors knew at the time the execution was issued that the debtor was insolvent. (*In re Kerr*, 2 N. B. R. 124; 2 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 7728; *Coxe v. Hale*, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 3310.)

**Collateral attack of judgment.**—A judgment is no more liable to collateral impeachment in proceedings under the Bankrupt Act, except to show that the judgment in question was designed as a means of avoiding the equal distribution of the debtor's estate among his creditors, than it is to such impeachment in the courts where it was rendered. (*Michaels et al. v. Post, Ass.*, 12 N. B. R. 152; 21 Wall 198.) A judgment confessed by warrant of attorney on notes executed simultaneously therewith, when the debtor was not insolvent and the creditor was without reasonable cause to believe him to be insolvent, is not a fraudulent preference, and the judgment creditor is entitled to the payment thereof out of the assets of the bankrupt's estate. (*In re Wright*, 2 N. B. R. 155; Fed. Cas. 18071.)

b. If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein,

shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

[Act of 1867. SEC. 35. . . . That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be *prima facie* evidence of fraud. Any contract, covenant, or security made or given by a bankrupt or other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and if any creditor shall obtain any sum



of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained to be recovered by the assignee for the benefit of the estate.

Sec. 39. . . . And if such person shall be adjudged a bankrupt, the assignee may recover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this act, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, or that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.]

A lien created pursuant to suit, including an attachment upon *mesne* process or a judgment by confession, begun against a person within four months before filing a petition in bankruptcy, shall be dissolved by the adjudication of such person a bankrupt, if it appears that the lien was created through fraud, or while the defendant was insolvent, or the parties to be benefited thereby had knowledge that the defendant was insolvent. (Sec. 67, c.) The act provides that, in computing time, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or a holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a holiday. (Sec. 81.)

**Effect of giving or taking preference.**—Creditors who have obtained a preference by a bill of sale from the debtor are estopped to set up the execution of the same as an act of bankruptcy, or if they have taken possession of the entire property of a debtor under a general assignment or bill of sale, intended to prefer them, cannot set up the non-payment of a note as an act of bankruptcy. (*In re Williams*, 14 N. B. R. 182; Fed. Cas. 17706.) Certain creditors received preferences from an insolvent debtor, and to prevent other creditors from instituting proceedings in bankruptcy contracted to pay them a sum of money. Suit was brought on this contract, and the question of its validity being raised, the court held that creditors could make such a contract. (*Berryman v. Allen*, 15 N. B. R. 118.) A stipulation by a creditor for a secret advantage is altogether void. Not only can he take no advantage from it, but he also loses the benefit of a composition (*Brookmire & Rankin v. Bean, Ass.*, 12 N. B. R. 217; 8 Dill. 186; 2 Cent. Law J. 265; Fed. Cas. 1942); and a claim of a creditor for expenses incurred in an effort to obtain a preference will be rejected (*In re Archibrown*, 8 N. B. R. 429; Fed. Cas. 503); but mere preferences made without contemplation of proceedings in bank-

ruptcy cannot be set up against a discharge. (In re Jones, 18 N. B. R. 286; 2 Lowell, 451; Fed. Cas. 7446; In re Brent, 8 N. B. R. 444; 18 Int. Rev. Rec. 159; Fed. Cas. 1832; In re White et al., 18 N. B. R. 107; Fed. Cas. 17533.)

A debtor who has grounds for fearing and believing that he is insolvent, and, acting on such belief, makes a payment to one creditor two days prior to his failure, is not entitled to a discharge in bankruptcy, such payment being a preference of one creditor over the others. (In re Doyle, 3 N. B. R. 158; Fed. Cas. 4051; In re Gay, 2 N. B. R. 114; 1 Hask. 108; 1 Amer. Law T. Rep. Bankr. 73; 2 Amer. Law T. Rep. Bankr. 52; Fed. Cas. 5279; In re Foster, 2 N. B. R. 81; 1 Amer. Law T. Rep. Bankr. 127; 1 Chi. Leg. News, 103; Fed. Cas. 4961; In re Finn, 8 N. B. R. 525; Fed. Cas. 4795; In re Jones & Hoyt, 12 N. B. R. 48; 7 Chi. Leg. News, 163; Fed. Cas. 7452.) But the fact that a bankrupt paid certain creditors in full shortly before commencement of proceedings is no ground for withholding a discharge where it is not shown that such payments were intended as preferences (In re Burgess, 3 N. B. R. 47; Fed. Cas. 2153); and where, on application for a discharge, it appeared that the bankrupt had given fraudulent preferences, but no creditors appeared in opposition, it was held that the court would not deny a discharge where creditors were not opposed thereto. (In re Clark et al., 19 N. B. R. 301; 36 Leg. Int. 414; Fed. Cas. 2812.)

A bank obtained payment of a dishonored bill of exchange by an acceptance within four months of the bankruptcy of the acceptor. The assignee recovered back the amount paid. In a suit against the indorser by the bank it was held that the holder having taken a preference without the indorser's consent, and so prevented the indorser, for that time, from indemnifying himself, the indorser was discharged. (Northern Bank of Kentucky v. Cooke, 18 N. B. R. 306.) A debtor who was insolvent gave certain preferences to creditors who knew of his insolvency. A little more than two months after the preference bankruptcy proceedings were commenced, the debtor accepting service. Thereupon the debtor proposed a composition, and offered one of the preferred creditors as an indorser for deferred payments. The composition was accepted by the requisite number, but objected to by a minority. It was held that the composition would not be confirmed unless the *pro rata* offered to all of the creditors equaled the amount they would have been entitled to if no preference had been made. (In re Jacobs, 18 N. B. R. 48; Fed. Cas. 7159.)

No creditor who has received a preference, having at the time reasonable cause to believe his debtor insolvent, is authorized to institute proceedings in bankruptcy. (Ecker v. McAllister, 17 N. B. R. 42.) The purpose of the Bankrupt Act being to enforce equal distribution of an insolvent's estate, every act of an insolvent that tends to defeat that purpose should be construed strictly against him (Hall, Ass., v. Wager

& Fales, 5 N. B. R. 181; 3 Biss. 28; 5 West. Jur. 588; 3 Chi. Leg. News, 401; Fed. Cas. 5951); but there is no such collusion as will deprive the parties of rights to which they would otherwise be entitled, where it is only shown that the parties endeavored to obtain all the advantage that the law would afford them. (*Whithed et al. v. Pillsbury et al., Ass.*, 18 N. B. R. 241; Fed. Cas. 17572.)

**Nature of fraud.**—A mere fraud on the Bankrupt Act by accepting a preference in violation of its provisions is not an actual fraud. (*In re Riorden*, 14 N. B. R. 332; Fed. Cas. 11852.)

**What is notice to creditor.**—Any agreement by an insolvent debtor with a creditor to create a preference in favor of that creditor is void if the creditor has cause to believe the debtor insolvent, and he is afterwards proceeded against under the act. (*Second Nat. Bank v. Hunt*, 4 N. B. R. 198.) A creditor to whom a conveyance has been made by an insolvent debtor need not have absolute knowledge of the fact of insolvency, in order to defeat the conveyance, but only reasonable cause to know; that is, that such a state of facts had been brought to his notice as would have led prudent business men to conclude that the debtor could not meet his obligations as they matured in the ordinary course of business. (*Toof v. Martin*, 6 N. B. R. 49; 18 Wall. 40; *Lloyd, Ass., v. Strobbridge*, 16 N. B. R. 197; 10 Chi. Leg. News, 1; *San Fran. Law J.* 13; Fed. Cas. 8435; *In re Hauck*, 17 N. B. R. 158; Fed. Cas. 6219; *In re McDonough, White, Ass., v. Rafferty*, 3 N. B. R. 58; 1 Chi. Leg. News, 361; 16 Pittsb. Leg. J. (O. S.) 110; Fed. Cas. 8775; *Burfee v. First Nat. Bank of Janesville*, 9 N. B. R. 814; *Buchanan et al. v. Smith*, 7 N. B. R. 513; 16 Wall. 277; *Armstrong v. Rickey Bros.*, 2 N. B. R. 150; 1 Chi. Leg. News, 145; 2 Amer. Law T. Rep. Bankr. 65; Fed. Cas. 546; *Boothe, Ass., etc. v. Brooks, Nedy & Co.*, 12 N. B. R. 398; 1 N. Y. Weekly Dig. 125; Fed. Cas. 1650; *Singer, Ass., v. Sloan et al.*, 12 N. B. R. 208; 8 Dill. 110; 7 Chi. Leg. News, 231; 2 Cent. Law J. 218; Fed. Cas. 12898; *Loudon, Ass., v. National Bank*, 15 N. B. R. 476; 2 Hughes, 420; Fed. Cas. 8525; *Scammon, Ass., v. Cole et al.*, 5 N. B. R. 257; 3 Cliff. 472; Fed. Cas. 12482.) A knowledge of facts and circumstances which would put a prudent man upon inquiry is a reasonable cause to believe a debtor insolvent; and if a creditor had reasonable cause, when taking a preference, to believe the debtor insolvent, it makes no difference what he thought or knew of the debtor's intentions in giving the preference. (*Webb, Ass., v. Sachs et al.*, 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17825.)

Where a creditor to whom preference has been given may by the slightest inquiry be apprised of his debtor's real condition, he is chargeable with a knowledge of the facts as they exist. (*Lloyd, Ass., etc. v. Strobbridge*, 16 N. B. R. 197; 10 Chi. Leg. News, 1; 1 San Fran. Law J. 13; Fed. Cas. 8435.) Knowledge of attorneys of a judgment creditor, of the bankrupt's insolvency and intent to evade the bankrupt law, is the knowledge of the creditor. (*Rogers, Ass., etc. v. Palmer*, 19 N. B. R. 471;

102 U. S. 263; *Sage, Jr. v. Wynkoop, Ass.*, 16 N. B. R. 363; Fed. Cas. 12215.) A transfer may be attended by such circumstances that the creditor will not be entitled to rely on the false statements of the debtor as to his condition (*Bucknam, Ass., v. Goss*, 13 N. B. R. 337; 1 Hask. 630; Fed. Cas. 2097); as if a deed be taken because the grantor was unable to pay the money which it was given to secure. (*Alderdice, Ass., v. Bank*, 11 N. B. R. 398; 1 Hughes, 47; Fed. Cas. 154.) It is sufficient notice where a debtor was insolvent and the creditor might have ascertained the fact to be so by reasonable inquiry (*Dutcher v. Wright, Ass.*, 16 N. B. R. 331; 94 U. S. 553); as when a banker cashed a sight draft, and on the following day received from the drawer collaterals to secure the payment of the draft (*Merchants' Nat. Bank of Cincinnati v. Cook et al., Trustees*, 16 N. B. R. 391; 95 U. S. 342); and where one constituted attorney for the collection of a debt procured from the debtor a judgment note for the amount in his own name and entered it, knowing that the debtor was insolvent (*Vogle v. Lathrop*, 4 N. B. R. 146; 18 Pittsb. Leg. J. 106; Fed. Cas. 16985); and where creditors have accounts overdue seven or eight months, and finally have to resort to legal measures for the collection of them. (*Stranahan v. Gregory & Co.*, 4 N. B. R. 142; Fed. Cas. 13522.)

**Effect of notice to creditor — Preferences are void.**— It has been held that an assignee of a principal cannot recover from a creditor for money paid to the creditor by a surety, even though the surety receives the money from the principal by a preference, if the creditor has no knowledge of that fact and receives the money in discharge of the obligation of the surety. (*Tyler, Ass., v. Brock et al.*, 17 N. B. R. 239.)

The following have been held to be preferences and void where the creditor had reasonable cause to believe the debtor insolvent: The sale of goods by a debtor to a creditor, with intent to prefer such creditor (*In re McDonough, White, Ass., v. Rafferty*, 3 N. B. R. 53; 1 Chi. Leg. News, 361; 16 Pittsb. Leg. J. (O. S.) 110; Fed. Cas. 8775); the receipt from a debtor of an assignment of his account against a third party, which the creditor in proof collects, or goods to be applied to part payment of the debt (*In re Kingsbury et al.*, 3 N. B. R. 84; Fed. Cas. 7816); the receipt by an indorser on a bankrupt's note of money to secure his liability as indorser (*Abel, Jr., et al. v. Thorner*, 3 N. B. R. 29; 2 Bond, 287; 16 Pittsb. Leg. J. 78; 1 Chi. Leg. News, 337; 1 Amer. Law T. Rep. Bankr. 129; Fed. Cas. 103); a mortgage given to secure a pre-existing debt (*In re Graham, Ass., v. Stark et al.*, 3 N. B. R. 92; 3 Ben. 520; 2 Chi. Leg. News, 73; Fed. Cas. 5676; *Scammon, Ass., v. Cole & Hooper*, 3 N. B. R. 100; 1 Hask. 214; Fed. Cas. 12433); where an insolvent, within four months of his bankruptcy, executes a second mortgage to his creditor in substitution of a first. (*In re Jordan*, 9 N. B. R. 416; Fed. Cas. 7529.)

A transfer of property which necessarily gives a preference to one creditor over another is presumed to have been made with a view to such preference, and fraudulent. (*Catlin v. Hoffman*, 9 N. B. R. 342; 2

Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521.) Where an officer of a corporation, without authority, executes a deed of trust as security for a negotiable instrument more than four months prior to commencement of proceedings in bankruptcy, which act is ratified by the corporation, but within the four months prior to commencement of the proceedings, the validity of the deed must be determined by the circumstances existing at the time of the ratification. (In re Kansas City Stone and Marble Mfg. Co., 9 N. B. R. 76; Fed. Cas. 7610.) An insolvent substituted small notes payable immediately for larger ones held by his bank, with intent to give a preference, which enabled the bank to obtain judgment and levy on the debtor's property more readily. The bank knew of the insolvency of the debtor and demanded the substitution as a condition to a further loan. It was held a preference and void. (Loudon, Ass., v. Bank, etc., 15 N. B. R. 476; 2 Hughes, 420; Fed. Cas. 8525.)

To defeat a conveyance for a present consideration the proof must show that the party to whom or for whose benefit it was made knew or had reasonable cause to believe the grantor insolvent and that a fraud was intended. (Gatman & Co. v. Honea, Ass., 12 N. B. R. 498; 7 Chi. Leg. News, 395; Fed. Cas. 5271; Barbour et al. v. Priest, Ass., 19 N. B. R. 518; 103 U. S. 293.) A forced assignment of all property to a creditor is a preference of such creditor, and an act of bankruptcy, and such creditor is charged with knowledge of the insolvency of the assignor. (Grow, Ass., v. Ballard et al., 2 N. B. R. 69; 1 Amer. Law T. Rep. Bankr. 111; Fed. Cas. 5848.) If a mortgagor conveys in fraud of the act, actual notice must be brought home to the mortgagee who has taken the conveyance under circumstances promising material relief to the debtor and apparently for that purpose. (Boothe, Ass., v. Brooks, Neely & Co., 12 N. B. R. 396; 1 N. Y. Wkly. Dig. 125; Fed. Cas. 1650.)

A creditor having reasonable cause to believe his debtor insolvent, and who receives payment, has reasonable cause to believe he is obtaining a preference; but persons other than creditors dealing with an insolvent, even if they have reasonable cause to believe him so, are not on the same footing, as they do not necessarily enable the debtor to contravene the act. (Darby's Trustees v. Lucas, 5 N. B. R. 487; Fed. Cas. 8572.) To make a transfer of demands and accounts a fraudulent preference, it must be shown that the debtors were at the time insolvent or contemplated insolvency; that they made the transfer with a view to giving a preference, and that the transferee had reasonable cause to believe the transferor was insolvent, and knew that the transfer was in fraud of the provisions of the law. (In re Broich et al., 15 N. B. R. 11; 7 Biss. 308; Fed. Cas. 1921.) A chattel mortgage void as against creditors under the state law, and under which mortgagee had taken possession, having reasonable cause to believe the debtor insolvent, is void as against the assignee in bankruptcy (Harvey, Ass., v. Crane, 5

N. B. R. 218; 2 Biss. 496; 3 Chi. Leg. News, 841; Fed. Cas. 6178); but to render a mortgage void under the Bankrupt Act, it is not necessary that the debtor knew or believed himself insolvent. The act treats of insolvency as a condition of fact, not of belief, and with a knowledge of which he is chargeable in law. (Hall, Ass. v. Wager et al., 5 N. B. R. 131; 3 Biss. 28; 5 West. Jur. 538; 3 Chi. Leg. News, 401; Fed. Cas. 5951.)

Where a creditor is preferred in a settlement, the preference cannot be set aside unless it can be shown that the creditor receiving it had reasonable cause to believe a fraud on the bankrupt law was intended. (Castle, Ass. v. Lee, 11 N. B. R. 80; Fed. Cas. 2506.)

**Ignorance of the law no excuse.**—Ignorance of the law cannot avail creditors who are possessed of facts that show the insolvency of the debtor, and a preference received under such circumstances is fraudulent and void. (Martin v. Toof et al., 4 N. B. R. 158; Fed. Cas. 9164.)

**Intent to prefer.**—To constitute a fraudulent preference by an insolvent debtor, the preference must be an advantage actually given to one or more creditors over the others, with the knowledge of his situation and the intent to accomplish this end (In re Miller v. Keys, 3 N. B. R. 54; Fed. Cas. 9578); and there must be guilty collusion. (Clark, Ass. v. Iselin, 11 N. B. R. 337; 21 Wall. 360.) An act of preference is sufficient evidence of the intent, and no particular or specific evidence of the intent to prefer is necessary when a payment is made by an insolvent debtor (In re Oregon Bulletin Printing and Publishing Co., 13 N. B. R. 503; 1 Cin. Law Bul. 87; Fed. Cas. 10559; Reson v. Knapp, 4 N. B. R. 144; Fed. Cas. 11861); and if the act which is made the act of bankruptcy is a passive one, such as suffering property to be taken on legal process, when the debtor is insolvent, with intent to give a preference, if the natural and probable consequence of the act is to give the preference, it will be inferred that the debtor had such intent, and the burden of proof will be upon him to show the contrary. (In re Black et al., 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457; In re Silverman, 4 N. B. R. 173; 13 Int. Rev. Rec. 52; Fed. Cas. 12855; Curran v. Munger, 6 N. B. R. 38; Fed. Cas. 3487.)

The assignee, in proceeding to recover money or property obtained by way of a preference, must not only show the act of the bankrupt of which complaint is made, but must also make it manifest that the transfer was made with a view to give a preference over other creditors, and that the creditor so favored knew the person making the transfer was insolvent. (Mays et al. v. Fritton, 11 N. B. R. 229; 20 Wall. 414; In re Baker, 14 N. B. R. 433; 14 Alb. Law J. 294; Fed. Cas. 763.)

An insolvent debtor who does not go into voluntary bankruptcy, but against whom a judgment by default is obtained, suffers his property to be taken in execution with intent to give a preference, although the judgment was obtained against his will (In re Forsyth and Murtha, 7 N. B. R. 174; Fed. Cas. 4948, citing Toof et al. v. Martin, 6 N. B. R. 49); also

where he confesses judgment which is followed by execution (*Webbs, Ass. v. Sachs et al.*, 15 N. B. R. 168; 4 *Sawy.* 158; 9 *Chi. Leg. News*, 156; *Fed. Cas.* 17825); or where an officer of a corporation suffers executions to be levied, one after another, for many weeks, by one creditor, without giving notice to the others (*Warren v. Delaware, Lackawanna & W. Ry. Co.*, 7 N. B. R. 451; 5 *Chi. Leg. News*, 205; 4 *Leg. Op.* 538; *Fed. Cas.* 17194; *Wilson v. Brinkman*, 2 N. B. R. 149; 1 *Chi. Leg. News*, 198; 2 *Amer. Law T. Rep. Bankr.* 65; *Fed. Cas.* 17794); and where the debtor signs and delivers to defendants a judgment note, payable one day after date, giving them the right to enter the same of record and issue execution thereon without delay for a debt which was not then due (*First Nat. Bank of Clarion v. Jones, Ass.*, 11 N. B. R. 381; 21 *Wall.* 325; *Martin v. Toof et al.*, 4 N. B. R. 158; 1 *Dill.* 208; *Fed. Cas.* 9167); also if payments are made by an insolvent debtor before bankruptcy proceedings (*In re Forsyth and Murtha*, 7 N. B. R. 174; *Fed. Cas.* 4948); and where a creditor holding a warrant to confess judgment causes execution to issue thereon after notice of such facts as make it reasonable to believe debtor is insolvent (*Golson et al. v. Neihoff et al.*, 5 N. B. R. 56; 2 *Biss.* 484; *Fed. Cas.* 5524); or where a debtor suffers a creditor to do acts which will secure a preference, and knows the consequences of such acts. (*Warren v. Bank*, 7 N. B. R. 481; 10 *Blatchf.* 498; *Fed. Cas.* 17202; *Hyde v. Corrigan*, 9 N. B. R. 466; *Fed. Cas.* 6068; *Christman v. Haynes*, 8 N. B. R. 528; *Fed. Cas.* 2703.) It does not rebut the intent to prefer to show that the debtor has also another motive to the proceeding, namely, an expectation of future benefit to himself, by means of future loans of money, and being enabled thereby to continue his business. (*Rison v. Knapp*, 4 N. B. R. 114; *Fed. Cas.* 11861.)

When the issue to be decided is whether a judgment against an insolvent was obtained with a view to give a preference, the intention of the bankrupt is the turning point of the case, and all the circumstances which go to show such intent should be considered (*Little, Ass. v. Alexander*, 12 N. B. R. 134; 21 *Wall.* 500); and the law infers intent if, after deducting the property which is the subject of a voluntary settlement, sufficient available assets are not left for the payment of the settlor's debts. (*Sedgwick, Ass. v. Place et al.*, 5 N. B. R. 168; 5 *Ben.* 184; 3 *Chi. Leg. News*, 409; 4 *Amer. Law T. Rep. (U. S. Ct.)* 179; 6 *Amer. Law Rev.* 181; *Fed. Cas.* 12620.) The transfer by an insolvent debtor of a large portion of his property to one creditor, with no provision for an equal distribution of its proceeds to all his creditors, is a preference, and is conclusive evidence that such was intended, unless the debtor can show that at the time he was ignorant of his insolvency, and that he could reasonably expect to pay all his debts. (*Toof v. Martin*, 6 N. B. R. 49; 18 *Wall.* 40.) Very slight circumstances indicating the existence of an affirmative desire on a bankrupt's part to give a preference, or to defeat the operation of the act, may, by giving color to the whole transaction, make void a lien against his property. (*Wilson v. Bank*, 9 N. B. R. 97; 17 *Wall.* 478.)

Procurement to take in execution may be inferred from such relationship between the debtor and creditor, and apparent concert of action on their part as would ordinarily be incompatible with any other intention on the part of the debtor than that of giving a preference to the creditor. (In re Dunkle and Driesbach, 7 N. B. R. 72; Fed. Cas. 4160.)

In an action to recover that which has been conveyed as a preference under the Bankrupt Act, the burden of proof is on the assignee, but the intent of the parties may be inferred from their acts. (Parsons v. Topliff, 14 N. B. R. 547.)

An intent to evade the Bankrupt Act is not evinced by taking of steps to obtain satisfaction by the ordinary course of law, even with knowledge on part of the creditor that his debtor is insolvent, and in the absence of further facts the party first obtaining possession of property can hold it against interference by the bankrupt court (Appleton v. Bowles et al., 9 N. B. R. 354); nor where there is an honest intention not to stop payment of a security which was partly given for money previously advanced, if coupled with sufficient present advantage to the debtor to relieve the case of any fraudulent appearance. (Ex parte Ames, 7 N. B. R. 230; 1 Lowell, 561; Fed. Cas. 323.) A debtor who pays money under an order of his creditor to a third party, with the intent thereby to enable his creditor to give a preference to such third party, will be deemed to still hold it, and the assignee may sue him for its recovery. (Fox et al. v. Gardner, 12 N. B. R. 137; 21 Wall. 475.)

**Preferences more than four months before bankruptcy are valid.**—A creditor may obtain a preference from an insolvent debtor with knowledge of the insolvency, if within the limitation prescribed by law, but the possession must be obtained by a complete act within the limitation. (In re Foster, 18 N. B. R. 64; 10 Chi. Leg. News, 315; Fed. Cas. 4964.)

After the lapse of four months the simple preferences which an insolvent debtor may have made are to be held valid as against all the world so far as the preferred creditor is concerned (Potter et al. v. Coggeshall, 4 N. B. R. 19; Fed. Cas. 11322); but where the parties at the time of executing a preferential deed agree to conceal it from other creditors, and for that purpose keep it from record, the time of limitation begins to run only from the day on which it is filed for record. (Exchange Nat. Bank of Columbus v. Harris, Ass., 14 N. B. R. 510; 1 Cin. Law Bul. 357; Fed. Cas. 4595.)

c. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.



In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor, the account must be stated and one debt set off against the other, and the balance only shall be paid or allowed. (Sec. 68, *a.*) A lien given or accepted in good faith and not in contemplation of or in fraud upon this act, and for a present consideration, which have been recorded according to law, if a record is necessary, are not affected by this act. (Sec. 67, *d.*)

*d.* If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be reexamined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

**Payments and transfers to attorneys.**—Payment of attorney's fees for services previously rendered and to be rendered does not constitute a preference, even as to the services to be rendered, if the amount is reasonable. (In *re* Sidle, 2 N. B. R. 77; Fed. Cas. 12844.) If an insolvent debtor pays a retainer to counsel to assist him in the proper discharge of his duty under the bankrupt law, the payment is valid, but it is void if made with a view to prevent his property from being distributed under the act and the attorney knows him to be insolvent. (Goodrich v. Wilson, 14 N. B. R. 555.) But where a bankrupt gave a mortgage, after commencement of proceedings in bankruptcy, to secure pay for the services of mortgagee in resisting creditor's petition, it was held that the mortgage might be summarily set aside without a bill in equity. (In *re* Sims, 16 N. B. R. 251; Fed. Cas. 12888.) Where a bankrupt made an assignment to S., whose attorney was also attorney for the bankrupt and for a creditor, and payments were made by the attorney from the proceeds of the assigned estate to S. and the creditor, it was held that the assignment was void, and the attorney, S. and the creditor must deliver such estate or the proceeds thereof to the assignee in bankruptcy. (In *re* Meyer, 2 N. B. R. 137; 1 Chi. Leg. News, 210; Fed. Cas. 9515.) Before filing a voluntary petition in bankruptcy, the debtors assigned a number of claims to their attorneys and paid them one hundred and fifty dollars for services rendered and to be rendered in the bankruptcy proceedings. The attorneys collected some of the claims, and upon the suit for the money, and after issue joined, the assignee applied to compromise the claim. The court held it was not a proper case for compromise. (In *re* Rowe et al., 18 N. B. R. 428; Fed. Cas. 12092.)

## CHAPTER VII.

### ESTATES.

**Sec. 61. Depositories for money.**—*a.* Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

[**Act of 1867. SEC. 17.** . . . That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession.]

Trustees are required to deposit all moneys received by them in one of the designated depositories and disburse the same only by check or draft on the same. (Sec. 47, *a.*) No moneys shall be drawn from the depository unless by check or warrant, signed by the clerk of the court or by a trustee, and countersigned by the judge of the court, or by a referee designated for the purpose, or by the clerk or his assistant, under an order from the judge. The name of any referee or judge authorized to countersign such checks must be furnished to the depository. (Orders XXIX.)

A bank in which funds are deposited to the credit of an assignee in bankruptcy has no power to pay out any of said funds except upon proper warrant under the authority of the court of bankruptcy. A state court has no authority to order such a bank to pay out of such funds a judgment rendered against the assignee. (*Havens v. Bank*, 13 N. B. R. 95.)

**Sec. 62. Expenses of administering estates.**—*a.* The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under

oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

[Act of 1867. Sec. 28. . . . If at any time, there shall not be in his (assignee's) hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. . . .

Sec. 47. . . . The enumeration of the foregoing fees shall not prevent the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in the section in classes of cases to be named in their rules and orders.]

The compensation of referees (sec. 40), trustees (sec. 48), clerks and marshals (sec. 53) and stenographers (sec. 38) are fixed by law. The cost of preserving the estate subsequent to filing the petition is one of the debts entitled to priority of payment. (Sec. 64, b.)

The compensation allowed by the act is in full for the services performed by clerks, referees and trustees, but does not include certain expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts. (Orders XXXV.)

**Care and preservation of property.**—An assignee may be allowed all sums necessarily expended in caring for the property, and included in such allowance may be sums for repaying others who had advanced money to pay off pressing liens and to put the property in marketable condition. (In re Gregg, 8 N. B. R. 181; 1 Hask. 178; Fed. Cas. 5796.) A sheriff, having in his hands property of a bankrupt taken under an execution prior to commencement of proceedings in bankruptcy, is entitled to the expenses incurred in keeping such property from the date of filing the petition until their delivery to the assignee. (Zeiber v. Hill, 8 N. B. R. 239; 1 Sawy. 268; Fed. Cas. 18206.)

**Auctioneer's fees.**—In view of the fact that all sales must be by public auction unless otherwise ordered by the court (Order XVIII, 1), the fees of auctioneers is without doubt an allowable expense, while under the act of 1867 the courts held that the law contemplated that the assignee himself should sell the property of the bankrupt, and the necessity for the employment of an auctioneer should be affirmatively shown before fees were to be allowed the assignee. (In re Pegues, 3 N. B. R. 19; Fed. Cas. 10907; In re Sweet et al., 9 N. B. R. 48; 21 Pittsb. Leg. J. 82; Fed. Cas. 18688.)

**Attorney's fees.**—An assignee cannot charge assets of estate in his hands for professional and clerical services rendered him as such until first duly allowed by the court, upon a showing that the same are necessary and reasonable. (In re Noyes, 6 N. B. R. 277; Fed. Cas. 10371.) An assignee has the right to seek professional advice and to employ counsel in necessary and proper cases. But the necessity for counsel must be apparent and the charge reasonable. (In re Davenport, 3 N. B. R. 18; Fed. Cas. 3587; In re Colwell, 15 N. B. R. 92.) It was also held that counsel fees are within the discretion of the trustee and the committee chosen to assist him, and in the absence of bad faith will not be interfered with by court. (In re Baxter et al., 19 N. B. R. 295; Fed. Cas. 1122.)

**Assignee under state law.**—An assignee under state law cannot be allowed an attorney's fee, nor compensation for his own services, but may be allowed the actual expenses incurred in doing that satisfactorily which the assignee in bankruptcy would have had to do in reference to the estate of the bankrupt. (In re Cohn, 6 N. B. R. 379; Fed. Cas. 2966; MacDonald, Ass., v. Moore, 15 N. B. R. 26; 8 Ben. 579; Fed. Cas. 8763; Burkholder v. Stump, 4 N. B. R. 191; Fed. Cas. 2165.)

**Rent.**—An assignee is personally liable for rent, but where his occupation was for the benefit of the estate he will be credited the amount which he was obliged to pay. (In re Webb & Co., 6 N. B. R. 302; Fed. Cas. 17315; In re Merrifield, 3 N. B. R. 25; Fed. Cas. 9465; In re Breck & Schermerhorn, 12 N. B. R. 215; 8 Ben. 93; Fed. Cas. 1822.) The assignee is bound to pay a reasonable compensation for the portion of a lot actually used, but he does not become an assignee of the lease and is not bound by its covenants. (In re Ives et al., 18 N. B. R. 23; Fed. Cas. 7116; In re Hufnagel, 12 N. B. R. 554; Fed. Cas. 6837.) Rent for the time an assignee occupies leased premises after adjudication is a preferred claim. (In re Butler, 6 N. B. R. 501; 19 Pittsb. Leg. J. 146; Fed. Cas. 2236.) If the officers of the court keep possession of the premises of a bankrupt, the landlord is entitled to a reasonable compensation for the time they are so occupied. (In re Hamburger & Frankel, 12 N. B. R. 277; 1 N. Y. Wkly. Dig. 53; Fed. Cas. 5975.) A landlord's claim for marshal's use of premises for keeping and storing goods is a cost of administration to be paid in full if the assets are sufficient; if not, to be paid *pro rata* with other claims of same class. (In re Hoagland, 18 N. B. R. 530; Fed. Cas. 6545.) Although the claim of a landlord is not strictly a lien, as it does not attach to any specific article of property, yet under the laws of Mississippi it is entitled to priority of payment out of the estate. (Austin v. O'Reilly, Ass., etc., 12 N. B. R. 329; 2 Woods, 670; 2 Cent. Law J. 455; 1 N. Y. Wkly. Dig. 36; Fed. Cas. 665.) The expenses of the estate cannot be deducted and allowed before the payment of rent that accrued after the commencement of the proceedings in bankruptcy and while the assignee occupied the premises. (Buckner v. Jewell et al., 14 N. B. R. 286.) Where goods of a bankrupt merchant had been left in the store rented by the bank-

rupt some months before the assignee took possession, but the assignee immediately removed them, the owner of the store could claim what was a reasonable price for storage of the goods, but not the value of the store as a salesroom. (In re The Lucius Hart Mfg. Co., 17 N. B. R. 459; Fed. Cas. 8592.) The estate is liable for the pasturage of the stock from the date of the institution of proceedings in bankruptcy. (In re Mitchell, 8 N. B. R. 47; 5 Chi. Leg. News, 271; Fed. Cas. 9657.) Without an order of the court, and without ascertaining whether the assets are sufficient to discharge all the expenses of administration of the same class, the assignee cannot pay a claim for use and occupation of premises. (In re Hoagland, 18 N. B. R. 530; Fed. Cas. 6545.) The prevention of injury to the premises, by not removing machinery, is not a circumstance to be considered in determining the compensation to the landlord for the use of the premises by the assignee. (In re Breck & Schermerhorn, 12 N. B. R. 215; 8 Ben. 98; Fed. Cas. 1822.)

**Wages.**—Workmen should be first paid, and charges connected with litigation disallowed. (In re Sawyer, 16 N. B. R. 460; 2 Lowell, 551; 15 Alb. Law J. 280; Fed. Cas. 12396.)

**Taxes.**—Funds in the hands of an assignee are liable to taxation by the state. (In re Mitchell, Ex parte Sherwin, 16 N. B. R. 535; 17 Alb. Law J. 26; Fed. Cas. 9658.)

**Cost of improvident suit.**—Where a bill of complaint had been filed by an assignee without sufficient cause, but the circumstances are not so clear as to require any imputation upon the good faith of the assignee in the prosecution of the suit, the costs will be paid out of the estate in the hands of the assignee. (Coxe v. Hale, 8 N. B. R. 562; 21 Pittsb. Leg. J. 77; Fed. Cas. 8810.)

**Sec. 63. Debts which may be proved.**—*a.* Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account,

or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bankrupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

[Act of 1867. SEC. 19. . . . That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt or to stand in the place of the creditor if he shall have proved the same, although such payment shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such regulations and limitations as

may be established by such rules. Where the bankrupt is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods.]

Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation, and final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment. (Sec. 57, n.) The proof of claims consists of a statement under oath in writing, signed by a creditor, setting forth the claim, the consideration therefor, and whether any, and if so what, securities are held therefor, and whether any, and if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor. (Sec. 57, a.) Further provisions as to proof and allowance of claims may be found under section 57, a-n.

Claims of creditor who have received preference will not be allowed unless the preferences are surrendered (sec. 57, g), nor will debts owing to the United States, a state, county or municipality as penalty or forfeiture, except for the amount of the pecuniary loss sustained by the act out of which the penalty or forfeiture arose. (Sec. 57, j.)

The court may permit proof of a partnership claim against the individual estates, and *vice versa*, and marshal assets of partnership and individual estates so as to prevent preferences and secure equitable distribution. (Sec. 5, g.)

Section 17 gives a list of debts which, though provable, are not affected by a discharge. Section 65 provides for the declaration and payment of dividends on all allowed claims. A set-off or counter-claim shall not be allowed in favor of any debtor of the bankrupt which is not provable against the estate. (Sec. 68, b, 1.)

**Fixed liability; judgment.**—A judgment from which an appeal is taken before proceedings in bankruptcy is a provable debt; but no dividends will be paid until judgment on the writ of error (In re Sheehan, 8 N. B. R. 345; Fed. Cas. 12737); and on proof of claim, judgment of appellate court was not conclusive, there being terms imposed (In re Shelbourne, 19 N. B. R. 359; Fed. Cas. 12745); but a confession of judgment by an insolvent debtor for the benefit of a creditor who has cause to believe that the debtor is insolvent is a fraud and deprives creditor of the right to prove claim against the bankrupt, notwithstanding he may disclaim any benefit and surrenders such judgment to the assignee. (In re Colman, 2 N. B. R. 172; 7 Blatchf. 192; Fed. Cas. 2979.) Creditors obtained judgment against bankrupts in an action for fraud, conspiracy and deceit. The court held that the debt was provable and bankrupt was entitled to stay of proceedings, including execution against person

(*In re Van Buren*, 19 N. B. R. 149; Fed. Cas. 16833); but a judgment for a fine imposed for a crime is not a debt provable against a bankrupt (*In re Sutherland*, 3 N. B. R. 83; *Deady*, 416; 8 Amer. Law T. Rep. (N. S.) 39; Fed. Cas. 13639; citing *People v. Spaulding*, 10 Paige, Ch. R., 284); and in a suit for that purpose an assignee recovered a judgment against preferred creditor, setting aside the preference. The creditor sought to prove his claim, but the court held the claim could not be proved. (*In re Cramer*, 13 N. B. R. 225; 8 Chi. Leg. News, 106; Fed. Cas. 3345.) See also sec. 57, *ante*, CLAIMS PROVABLE, p. 284.

**Fixed liability on an instrument in writing absolutely due—On leases.**—The landlord will be entitled to prove his claim in bankruptcy for the unexpired term of a lease, even though he has been preferred under a state law, for his rent up to the end of the year (*In re Wynne*, 4 N. B. R. 4; 2 Amer. Law T. Rep. Bankr. 116; Fed. Cas. 18117); but if the assignee elects to accept a lease held by bankrupt, he makes himself liable on behalf of the estate for the rent (*In re Laurie, Blood and Hammond*, 4 N. B. R. 7); and where suit was brought for a month's rent, part of which accrued before bankruptcy and part afterwards, it was held, for the part before bankruptcy, plaintiffs could prove against the estate, and the discharge will release it; for that part afterwards they could recover. (*Treadwell et al. v. Marden*, 18 N. B. R. 353.) A marshal held property seized on the premises which the bankrupt had leased. The landlord claimed rent for the premises. It was held that the rent was to be measured by the value of the premises for storage of the goods. (*In re Wheeler et al.*, 18 N. B. R. 385; Fed. Cas. 17490.) See also sec. 57, *ante*, CLAIMS PROVABLE, p. 284.

**Interest.**—Where borrower gives his note for the loan, with legal interest, and pays for the accommodation, such contract is infected with usury, and if the *lex loci* provide for the forfeiture of the debt the contract is void, and the debt cannot be proved against the estate in bankruptcy (*In re Pittock*, 8 N. B. R. 78; 2 Sawy. 416; Fed. Cas. 11189); and the reservation of a greater rate of interest than six per centum by bank, or discounting a promissory note, does not render the debt for the principal one not provable in bankruptcy (*In re Moore*, 1 N. B. R. 123); but notes given for the excess over legal interest are not provable in bankruptcy. (*Shaffer v. Fritchery & Thomas*, 4 N. B. R. 179; Fed. Cas. 12697.) See also sec. 57, *ante*; CLAIMS PROVABLE, p. 284; THE ALLOWANCE OR REJECTION OF CLAIMS, p. 289.

**Debts due wife.**—Husband reduced a legacy to possession and gave a note to his wife for the proceeds. He became bankrupt and the wife sought to prove the note. It was held that the bequest created no separate estate in the wife and the note was a nullity (*Canby, Ass. v. McLearn*, 13 N. B. R. 22; Fed. Cas. 2378); and a claim for alimony is not a provable debt, and proceedings to enforce its payment cannot be stayed by the bankrupt court. (*In re Lachenmeyer*, 18 N. B. R. 280; 13 Alb. Law T. 242; Fed. Cas. 7936.)



**On insurance.**—See also sec. 57, *ante*: CLAIMS PROVABLE, p. 284; THE ALLOWANCE OR REJECTION OF CLAIMS, p. 289.

**On mortgages.**—When a mortgage is given to indemnify the mortgagee for his advances and he lends his acceptance to mortgagor, and after bankruptcy of the latter buys up paper at a discount, he can only charge against the mortgage what he has paid to take up his acceptances. (*Ex parte Ames*, *In re McKay and Aldus*, 7 N. B. R. 230; 1 Lowell, 561; Fed. Cas. 323.) A mortgage executed by bankrupt, prior to bankruptcy, to secure a note given for services of an attorney in contemplated proceedings in bankruptcy, is void; but the claim for services may be proved. (*In re Evans*, 3 N. B. R. 62; Fed. Cas. 4552.) See also sec. 57, *ante*: A MOIETY ONLY OF A CLAIM PROVABLE, p. 276; THE ALLOWANCE OF SECURED CLAIMS, p. 293; SUBROGATION, p. 301.

**On indorsement.**—An indorser (now bankrupt) is not released from liability on the note of a corporation by purchase of said note by one intending to take the property of said corporation. (*Ex parte Balch*, *In re Elliott Felting Mills*, 13 N. B. R. 160; 2 Lowell, 440; Fed. Cas. 789.) But before proving against estate of indorser, claimant received dividend from estate of maker. It was held that he could prove only for balance (*In re Hicks et al.*, 19 N. B. R. 299; Fed. Cas. 6456); and the holder of a promissory note may prove his claim against the estates of both maker and indorser and receive dividends. (*National Mount Wollaston Bank v. Porter et al.*, 17 N. B. R. 329.) It was held that an indorsed note was not a secured claim (*In re Broich et al.*, 15 N. B. R. 11; 7 Biss. 803; Fed. Cas. 1921; sec. 507, R. S.); and finally, a note payable on demand was not presented for payment for four years, when attempt was made to hold the indorser, who had become bankrupt. The claim was disallowed. (*In re Crawford*, 5 N. B. R. 301; Fed. Cas. 3364.) See also sec. 57, *ante*: AMENDMENT OF PROOF, p. 275; A MOIETY ONLY OF A CLAIM PROVABLE, p. 276; THE PROOF IN GENERAL, p. 277; PROOF OF COMMERCIAL PAPER, p. 286; THE ALLOWANCE OF SECURED CLAIMS, p. 293; SUBROGATION, p. 301.

**Partnerships.**—A firm note issued to a partner for his share in the capital stock, and by him transferred to his wife, may be proved against the estate of such partner, but not against the partnership (*In re Frost & Westfall*, 3 N. B. R. 180; Fed. Cas. 5135); and where note was indorsed by one member of a partnership without the knowledge of the other, it cannot be proved against the firm (*In re Irving*, 17 N. B. R. 22; Fed. Cas. 7074); and notes drawn by one partner in the firm name, apparently in the course of business, without actual knowledge by the holder of want of authority or misapplication, entitle the holder to their allowance against the bankrupt estate of the firm (*Bush, Appellant, v. Crawford, Ass.*, 7 N. B. R. 299; Fed. Cas. 2224; reversing *In re Dunkle and Dreisbach*, 7 N. B. R. 107; Fed. Cas. 4161); and a note given in an individual transaction of one of the bankrupts, though signed in the firm name, is not provable against the firm assets (*In re Forsyth and*

Murtha, 7 N. B. R. 174; Fed. Cas. 4948); and a creditor holding the note of a copartnership, indorsed by one of its members, may prove in bankruptcy against the copartnership fund, and also against the separate estate of the copartner indorsing (*Stephenson v. Jackson*, 9 N. B. R. 255; 2 Hughes, 204; Fed. Cas. 13374); and a bond whereby several members of a firm bind themselves jointly and severally to pay amount therein expressed may be proven against the assets of the individual estate of each member of the firm. (In re Bigelow et al., 2 N. B. R. 121; 8 Ben. 146; 2 Amer. Law T. Rep. Bankr. 41; Fed. Cas. 1397.)

**Banks.**—A note taken for money loaned by a savings bank prohibited by law from loaning money on personal security is void, and does not constitute a debt provable in bankruptcy. (In re Jaycox & Green, 18 N. B. R. 122; Fed. Cas. 7244.) A deposited money with bankrupt's branch, and bankrupt made a public offer of twenty-five per cent. Branch bank received from her check for deposit and paid her dividend at rate of twenty-five per cent., so A.'s account balanced, but it was not entered on ledger from which schedule in bankruptcy was made. Such settlement was held valid and binding. (In re Bank of North Carolina v. Dewey, 19 N. B. R. 314; Fed. Cas. 897.) See also sec. 57, *ante*, THE DETERMINATION OF OBJECTIONS TO CLAIMS, p. 294.

**On doubtful paper.**—Where a note is subject to offset for an amount greater than the amount of the note it is not a provable debt. (In re Ford et al., 16 N. B. R. 426; Fed. Cas. 4932.) The claim of one of the creditors uniting in a petition was a note for \$250 falling due four days after the filing of the petition. It was not provable at date of filing. (In re Riker, 18 N. B. R. 393; Fed. Cas. 11933.) Where interest in advance has been put into a note, and the maker is adjudged a bankrupt before it becomes due, the interest not yet due shall be abated therefrom. (In re Riggs, Lechtenberg & Co., 8 N. B. R. 90.) A depositor of a bank delivered to the bank check for his full balance, accepting, in part payment, bonds. Upon petition to expunge proof of debt of assignee in bankruptcy of the bank, it was held that such bonds, when accepted by debtor in payment of his debt, constituted a valid payment. (Holleman v. Dewey, Ass., 7 N. B. R. 269; 2 Hughes, 341; Fed. Cas. 6607.) A surety is entitled to prove against the estate of his bankrupt principal, and receive dividends on the amount which he is required to pay, without deducting any security held by him. (Jervis v. Smith, 3 N. B. R. 147.) A university undertook to raise an endowment, and the bankrupt subscribed and gave his note for his subscription. He subscribed toward the erection of a new university building and paid a part of his subscription. Afterward he gave his note to the university for his two subscriptions and for money borrowed. It was held that the whole claim was valid (*Sturgis, Ass., v. Colby et al.*, 18 N. B. R. 168; Fed. Cas. 13574); and the holder of a negotiable note assigned after the filing of the petition may prove the debt against the bankrupt maker. (In re Murdock, 3 N. B. R. 36; 1 Lowell, 362; Fed. Cas.

9939.) See also sec. 57, *ante*: A MOIETY ONLY OF A CLAIM PROVABLE, p. 276; CLAIMS PROVABLE, p. 284; PROOF OF COMMERCIAL PAPER, p. 286; CLAIMS NOT PROVABLE, p. 287; THE WRITTEN INSTRUMENT UPON WHICH THE CLAIM IS FOUNDED, p. 289; SURRENDER OF PREFERENCES, p. 297.

**Debt, as cost against him.**—Where an assignment by a debtor to an assignee for the benefit of his creditors under a state law is avoided by one of his creditors under the bankrupt law, it was held that the proceedings under the state law were in fraud of the Bankrupt Act, and the court could not allow a party the expenses incurred in an attempt to defeat the operation of the bankrupt law. (*In re Stubbs*, 4 N. B. R. 134; Fed. Cas. 13557.)

But where a bankrupt seeks to prevent the establishment of a claim against him, he has sufficient interest to maintain appeal from a judgment thereon. If he be declared a bankrupt after the taking of appeal and the judgment below is affirmed, he may appeal from the affirmation. Costs incurred after bankruptcy are not provable against the estate. (*Sanford v. Sanford*, 12 N. B. R. 565.) See also sec. 57, *ante*: THE EFFECT OF PROOF, p. 277; THE ALLOWANCE OR REJECTION OF CLAIMS, p. 289.

**On open account.**—Where a debtor receives a voluntary contribution, such receipt does not create a debt due. (*In re Oregon Bulletin Printing and Publishing Co.*, 18 N. B. R. 508; 1 Cin. Law Bul. 87; Fed. Cas. 10559.) And a claim founded upon a large open account between the parties, and being in dispute, is of doubtful character, and the rights of the creditor are postponed until an assignee is appointed. (*In re Jones*, 2 N. B. R. 20; Fed. Cas. 7447.) Where J., administrator of an estate, used funds for firm of which he was a member, the court held that a joint and several claim was thereby created, and it could be proved against firm estate and estate of J. (*In re Jordan and Blake*, 19 N. B. R. 465.) And a party advancing money to a debtor to aid him in committing an act of bankruptcy will not be permitted to prove a claim for the money so advanced. (*In re Hatje*, 12 N. B. R. 548; 6 Bies. 436; Fed. Cas. 6215.) See also sec. 57, *ante*: BY WHOM PROOF MUST BE MADE, p. 278; CLAIMS PROVABLE, p. 284; SURRENDER OF PREFERENCES, p. 297; DEBTS DUE TO THE UNITED STATES OR A STATE, p. 302.

**On contracts express or implied.**—A speculative option, where the object of the parties is not a sale and delivery, but a settlement on difference, commonly called a "put," is void, either as within statutes against gambling or as against public policy, and is not a provable debt. (*In re Chandler*, 9 N. B. R. 514; 12 Amer. Law Reg. (N. S.) 810; 6 Chi. Leg. News, 229; Fed. Cas. 2590); so upon consideration of claim against bankrupt's estate growing out of a slave contract, the court held that the thirteenth amendment to the constitution repealed all laws sanctioning slavery, and, as such contracts were against natural justice, they depended upon positive law. Therefore, a right of action did not survive the repeal. (*Buckner v. Street*, 7 N. B. R. 255; 13 Int. Rev. Rec. 114; Fed. Cas. 2098.) The

court will allow a claim of a church corporation, founded upon a verbal promise by the bankrupt to M. that he would pay a certain sum if M. would subscribe a portion of the indebtedness due from the church to M., the promise being subsequently publicly announced by the bankrupt in the church, it appearing by the proof that the trustees of the church had incurred expenses upon the faith of the subscriptions generally. (*Capelle, Ass., v. Trinity M. E. Church of Chester*, 11 N. B. R. 536; Fed. Cas. 2392.) A. took a mortgage on goods sold to B. to secure purchase-money. B. was to sell the goods and apply the proceeds on the mortgage. B. sold part of the goods, but failed to account for them, and, on B.'s going into bankruptcy it was held that the proceeds of the goods remaining unsold should go to A., and that A. should prove his claim against B.'s estate as an unsecured creditor on A.'s surrendering the mortgage (*Overman, Ass., etc. v. Quick, Adm'r, etc.*, 17 N. B. R. 235; 8 Biss. 134; 10 Chi. Leg. News, 210; Fed. Cas. 10624); and an assignee of a workman's claim is entitled to prove the same in bankruptcy and receive the same preference which the assignor could have claimed. (*In re Brown*, 3 N. B. R. 177; 4 Ben. 142; Fed. Cas. 1974.) See also sec. 57, *ante*, THE DETERMINATION OF OBJECTIONS TO CLAIMS, p. 294.

**Claims of partners.**—A bankrupt creditor of bankrupt copartner has the residuum of the estate, separate and joint, belonging to the latter after all separate creditors of the debtor and joint debts of the firm are paid (*In re McLean et al.*, 15 N. B. R. 333; Fed. Cas. 8879); and a claim of one firm of which bankrupt is a partner against another firm of which he is a partner is not a debt provable against him (*In re Lloyd*, 15 N. B. R. 257; 5 Amer. Law Rec. 679; 15 Alb. Law J. 293; 24 Pittsb. Leg. J. 113; Fed. Cas. 8429); and a partner who has had to pay all the firm debts can prove against his bankrupt partner his proportion of the debts, and an agreement which is set aside will not prevent him from claiming this right (*In re Stephens*, 6 N. B. R. 533; Fed. Cas. 13265); and where a partner retires and agrees to pay all partnership debts, as between themselves the remaining partner is a surety for the retiring partner, but in case the surety has not actually paid any such debts he cannot prove claim against the estate of the retiring partner (*In re Phelps*, 17 N. B. R. 144; 9 Ben. 286; Fed. Cas. 11070); also three parties contracted a certain debt, giving a firm note. Afterwards the firm was dissolved. A. retired and B. and C. continued business, agreeing with A. to pay all outstanding debts. This agreement was not known to creditor. Afterwards B. and C. became bankrupt and the creditor proved his claim, but only received payment of part. Afterwards A. became bankrupt. It was held that the creditor could prove the balance of his claim against the estate of A. in bankruptcy (*In re Pease*, 13 N. B. R. 168; Fed. Cas. 10881); and where one member of copartnership, upon dissolution of the firm, receives the firm assets and agrees to pay the firm debts, on subsequent bankruptcy the firm creditors may, at their election, prove as separate creditors of the estate of the liquidating copartner. (*In re Long & Co.*,

9 N. B. R. 227; 7 Ben. 141; Fed. Cas. 8476.) A. and B. entered into a partnership by which it was agreed that the firm should assume the individual debts. The firm having become bankrupt, one of the individual creditors endeavored to prove against the firm assets. There was no evidence that the creditor had consented to the conversion of liabilities before bankruptcy. It was held that the rule prevented him from proving. (In re Isaacs & Cohn, 6 N. B. R. 92; 3 Sawy. 35; Fed. Cas. 7093.) B., a member of firm B. & Co., was treasurer of a corporation for which B. & Co. were business agents, authorized to receive and disburse moneys, except subscriptions to its capital stock. B. received subscriptions and paid the money into his firm. No acquiescence of the corporation appeared. Both B. and B. & Co. were liable, and proof could be made against both estates (In re Baxter et al., 18 N. B. R. 62; Fed. Cas. 1119); also where an executor invests funds of estate in his partnership business with assent of his copartner, the parties entitled may prove their debts against the partnership although they have proved against the executor's estate. (In re Tesson et al., 9 N. B. R. 378; Fed. Cas. 18844.)

**Effect of statute of limitations on debts.**—The fact that a creditor's remedy for his debt, by suit in New York, is barred by the statute of limitations, does not prevent the proof of such debt. (In re Sheppard, 1 N. B. R. 115; 7 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; Fed. Cas. 12755.) On the question as to whether a debt barred by the statute of limitations of Massachusetts, where bankrupt had resided for the past ten years, but not barred by the statutes of Vermont, where both parties resided when the contract was made, was provable, it was held that it was not, if objected to (In re Kingsley, 1 N. B. R. 52; 1 Lowell, 216; 1 Amer. Law Reg. (N. S.) 423; 15 Pittsb. Leg. J. 235; Fed. Cas. 7819); and a debt barred by the statute of limitations of Maine, where bankrupt resides, cannot be proved against his estate in bankruptcy by a creditor resident in another state (In re Harden, 1 N. B. R. 97; 1 Hask. 163; 1 Amer. Law T. Rep. Bankr. 48; 15 Pittsb. Leg. J. 343; Fed. Cas. 6048); and a debt barred by the statute of limitations of the state where the bankrupt resides cannot be proved against his estate (In re Kingsley, 1 N. B. R. 66; 1 Lowell, 216; 7 Amer. Law Reg. (N. S.) 423; 15 Pittsb. Leg. J. 235; Fed. Cas. 7819); but see *contra*: A debt barred by the statute of limitations in a state in which bankrupt resides may be proven against his estate. (In re Sheppard, 1 N. B. R. 115; 7 Amer. Law Reg. (N. S.) 484; 1 Amer. Law T. Rep. Bankr. 49; Fed. Cas. 12753.) Where the petitioner in involuntary bankruptcy claimed to be a creditor by reason of a claim which was barred by the statute of limitations, it was held bad and that the bankrupt court was not bound by the state statute. (In re Cornwell, 6 N. B. R. 305; 6 Amer. Law Rev. 365; Fed. Cas. 3250.) A debt barred by the statute of limitations of the state in which the proceedings are pending is not provable against the bankrupt, and cannot be reckoned in computing the number necessary to join in an involuntary petition (In re Noesen, 12 N. B. R.

422; 6 Biss. 443; 7 Chi. Leg. News, 419; 1 N. Y. Weekly Dig. 125; 2 Cent. Law J. 570; Fed. Cas. 10238; and the defense of the statute of limitations should be allowed whenever that defense is allowable in the state where the debtor resides. (In re Reed, 11 N. B. R. 94; 6 Biss. 250; 7 Chi. Leg. News, 76; Fed. Cas. 11635.)

The statute of limitations of the state which is the bankrupt's residence applies to proof of debts against his estate; and after adjudication the statute continues to run, and no claim can be enforced against the estate unless an action could be maintained in the state courts. (Nicholas, Ass., v. Murray et al., 18 N. B. R. 469; Fed. Cas. 10223.) The filing of the petition by a bankrupt, and his including the claim of a creditor in the schedule, is equivalent to a new promise, so as to prevent the claim from being defeated by the statute. (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Wkly. Dig. 243; Fed. Cas. 4331.) On a motion to expunge the proof of a debt against which the statute had run, it was held that said debt having been included in the debtor's schedules, it was provable. (In re Hertzog, 18 N. B. R. 526; Fed. Cas. 6433.) Where the assignee resisted a claim on the ground that it was barred by the statute, it was held that an acknowledgment of the debt by the debtor before the bar was sufficient. (In re Reed, 11 N. B. R. 94; 6 Biss. 250; 7 Chi. Leg. News, 76; Fed. Cas. 11635.) The act of 1867 allows the petitioner to object to debts barred by the statute; yet such a claim, if proved and not objected to, must be allowed, and the assignee must receive it as a claim entitled to dividend (In re Frear, 1 N. B. R. 201; 2 Ben. 467; 35 How. Pr. 249; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 5074); and a petitioner alleging a claim barred by the statute of limitations cannot maintain a petition in involuntary bankruptcy for an adjudication declaring his debtor a bankrupt. (In re Cornwell, 6 N. B. R. 305; 6 Amer. Law Rev. 365; Fed. Cas. 3250.) The running of the statute of limitations is arrested by filing of petition in bankruptcy (In re Maybin, 15 N. B. R. 468; Fed. Cas. 9337); and the statute of limitations ceases to run against the creditor at the commencement of proceedings in bankruptcy, and if not barred at that time his claim may be proved afterwards, though at the time it would be otherwise barred. (In re Eldridge & Co., 12 N. B. R. 540; 2 Hughes, 256; 1 N. Y. Wkly. Dig. 243; Fed. Cas. 4331.) In a case in involuntary bankruptcy the debtor sought to defeat petition on the ground that one-fourth in number and one-third in amount of creditors had not joined, the claim of one of such creditors being barred by the statute. It was held that such claim was not provable. (In re Noesen, 12 N. B. R. 422; 6 Biss. 443; 7 Chi. Leg. News, 419; 1 N. Y. Wkly. Dig. 125; 2 Cent. Law J. 570; Fed. Cas. 10238.) See also sec. 57, *ante*: HOW PROOF MUST BE GIVEN, p. 272; CLAIMS PROVABLE, p. 284; CLAIMS NOT PROVABLE, p. 287.

Generally—Fraud or preference, as defeating the right to prove.—Where the assignee has recovered against a preferred creditor, he may prove his debt if he has not assisted in the fraud. (In re Black et al., 17

N. B. R. 399; Fed. Cas. 1459.) H., who had received a preference from a bankrupt, offered proof of other debts against the bankrupt which were not due at the time preference was given. It was held that the same were not affected by the preference (In re Arnold, 2 N. B. R. 61; Fed. Cas. 551); and a creditor, knowing that the bankrupt was insolvent, received preferences and afterwards filed his claim for the amounts due him. The assignee raised the question that he was not entitled to prove. It was held that he could prove only a moiety of the debt. (In re Schoenenberger, 15 N. B. R. 305; Fed. Cas. 12473; sec. 5123, R. S.) A creditor induced to release his claim without consideration through the fraudulent representations of another creditor has a debt that will support a petition in bankruptcy. (Michaels et al. v. Post, Ass., 12 N. B. R. 153; 21 Wall. 398.) There is only constructive fraud where a creditor voluntarily restores a preference, and he will share in the estate (In re Schoenenberger, 15 N. B. R. 305; Fed. Cas. 12473); and a debt created by fraud of the bankrupt or by defalcation while acting in a fiduciary capacity was provable under the act of 1867. (In re Rundle and Jones, 2 N. B. R. 49; 1 Chi. Leg. News, 30; Fed. Cas. 12138.) Contained in the schedule of a bankrupt was a debt for legal services in preparing the petition and schedules and advice in relation thereto. Proof was filed of the claim. The claim was held not to be within the law (In re Heirschberg, 1 N. B. R. 195; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 6329); and no one who has received a preference shall, under the bankruptcy act, prove claim or receive dividends until he shall have surrendered to the assignee all property, money or benefit received by him. (Ecker v. McAllister, 17 N. B. R. 42; sec. 23.) See also sec. 57, *ante*: HOW PROOF MUST BE GIVEN, p. 272; BY WHOM PROOF MUST BE GIVEN, p. 274; CLAIMS PROVABLE, p. 284; CLAIMS NOT PROVABLE, p. 287; SURRENDER OF PREFERENCES, p. 297; THE RECONSIDERATION OF ALLOWED CLAIMS, p. 303.

**On provable debts reduced to judgment after adjudication.**—A judgment recovered after adjudication, in a suit to which the assignee was not a party, may be proved against the estate of a bankrupt, if the debt was a claim provable (In re Rosey, 8 N. B. R. 509; 6 Ben. 507; Fed. Cas. 12066); and where a judgment is recovered after commencement of proceedings, upon a debt which existed before that time, such debt is not so merged in the judgment as to deprive the creditor of right to prove it (In re Brown, 8 N. B. R. 145; 5 Ben. 1; Fed. Cas. 1975); and a judgment recovered in an action commenced prior to, and prosecuted during, proceedings in bankruptcy, is a provable debt (In re Stansfield, 16 N. B. R. 268; 4 Sawy. 334; Fed. Cas. 13294); and a judgment rendered after adjudication, although suit thereon was instituted prior thereto, is not provable against the estate, and no dividend can be declared thereon. (In re Williams, 2 N. B. R. 79; 3 Amer. Law Rev. 374; Fed. Cas. 17705.)

**Action in tort.**—After verdict, and before judgment, the defendant was adjudged bankrupt and moved for a continuance pending proceedings in bankruptcy. It was held that defendant was not entitled to

stay of proceedings, as the claim was not provable under section 19 of the act of 1867. (*Zimmer v. Schleeauf*, 11 N. B. R. 313.) See also sec. 57, *ante*: CLAIMS PROVABLE, p. 284; CLAIMS NOT PROVABLE, p. 287.

**What are debts provable.**—A creditor who had not proved his claim, though it was provable, sued on it. Defendant pleaded his bankruptcy and that the debt was provable and would be barred by discharge, and that proceedings were pending. It was held that the claim could be prosecuted to judgment. (*Holland v. Martin*, 18 N. B. R. 359; sec. 5105, R. S.) After proceedings in bankruptcy, government recovered against the bankrupt in a suit to which the assignee had not been made a party. It was held that as the claim was provable at the time of adjudication the judgment might be proved. (*In re Rosey*, 8 N. B. R. 509; 6 Ben. 507; Fed. Cas. 12066.) A petition may be filed by a creditor upon a claim which is not due if it is provable in bankruptcy. (*Linn et al. v. Smith*, 4 N. B. R. 12; 3 Amer. Law T. 218; 1 Amer. Law T. Rep. Bankr. 229; Fed. Cas. 8375.) Involuntary proceedings may be instituted against a debtor, although the debt is not due, if it is a provable debt. (*In re Alexander*, 4 N. B. R. 45; 18 Pittsb. Leg. J. 81; 3 Amer. Law T. 280; 1 Amer. Law T. Rep. Bankr. 238; Fed. Cas. 161.) By the term "debts provable under this act," Congress meant debts unconditionally provable, without preliminary action, either by the court or by the assignee, being necessary. (*In re Scrafford*, 14 N. B. R. 184; 3 Cent. Law J. 252; Fed. Cas. 12557; *In re Frost*, 11 N. B. R. 63; 6 Biss. 213; 7 Chi. Leg. News, 42; Fed. Cas. 5134.) Any debt which may be proved by complying with the Bankrupt Act is a provable debt. (*Rankin et al. v. Florida, etc. R. R. Co.*, 1 N. B. R. 196; 1 Amer. Law T. Rep. Bankr. 85; Fed. Cas. 11567.) See also sec. 57, *ante*: CLAIMS PROVABLE, p. 284; CLAIMS NOT PROVABLE, p. 287; THE RECONSIDERATION OF ALLOWED CLAIMS, p. 303.

b. Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

[Act of 1867. SEC. 19. . . . In all cases of contingent debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. . . . If any bankrupt shall be liable for unliquidated damages arising out of



any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.]

**When unliquidated damages provable.**—Unliquidated damages growing out of contract when assessed are provable debts, and may be set up to show that no debt is due to petitioner entitling him to have defendant declared bankrupt. (In re Osage Valley & S. Kan. R. R. Co., 9 N. B. R. 281; 1 Cent. Law J. 83; Fed. Cas. 10592.) A debt which is contested in a state court may be allowed to proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy proceedings, but execution shall be stayed. (In re Rundle and Jones, 2 N. B. R. 49; 1 Chi. Leg. News, 80; Fed. Cas. 12188.) Plaintiff sued for breach of covenant of warranty. Defendant pleaded in bar a discharge. It was held that a claim for breach of warranty is such a claim as should be proved in a bankrupt court; and therefore the discharge was a bar to such a claim, it having accrued prior to proceedings in bankrupt court. (Williams v. Harkins, 15 N. B. R. 34.) If a decision is not rendered until after final dividend, a bond to return property, if the decision requires it, is not a provable debt. (United States v. Rob Roy and Cargo, 13 N. B. R. 235; 1 Woods, 42; Fed. Cas. 16179.) No claims can be provable that were not liquidated at the time of the adjudication. (United States v. Rob Roy and Cargo, 13 N. B. R. 235; 1 Woods, 42; Fed. Cas. 16179.) A right of action for misrepresentation of a firm's condition, afterward bankrupt, is not provable as a debt. (In re Schuchardt and Wells, 15 N. B. R. 161; 8 Ben. 585; Fed. Cas. 12483.) Where a bankrupt, prior to bankruptcy, sells land under a covenant for title, when the wife of a former owner has a dower not relinquished, the claim for breach of covenant, in the event of the wife surviving and asserting her rights, is not such an "unliquidated" claim as may be proved in bankruptcy, and in an action a discharge is a complete defense. (Riggin v. Maguire, 8 N. B. R. 484; 15 Wall. 549.) A claim for rent, falling due after proceedings and after surrender of the premises by the assignee, cannot be proven as a debt against the bankrupt estate. (Bailey, Ass., v. Loeb & Bro., 11 N. B. R. 271; 2 Woods, 578; 2 Cent. Law J. 42; Fed. Cas. 739.) See also sec. 57, *ante*: THE PROOF OF SECURED CLAIMS, p. 281; CLAIMS HELD TO BE UNSECURED, p. 282; CLAIMS PROVABLE, p. 284; CLAIMS NOT PROVABLE, p. 287; THE ALLOWANCE OR REJECTION OF CLAIMS, p. 289; DEBTS DUE THE UNITED STATES OR A STATE, p. 302.

**Sec. 64. Debts which have priority.**—*a.* The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district,

b. The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates; and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

[Act of 1867. Sec. 27. . . . Except that wages due from him to any operative, or clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full.

Sec. 28. . . . In the order for a dividend, under this section, the following claims shall be entitled to priority or preference, and to be first paid in full in the following order:

First. The fees, costs, and expenses of suits, and the several proceedings in bankruptcy under this act, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the State in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws of such State.

Fourth. Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Fifth. All debts due to any persons who, by the laws of

estate, and have priority or preference in the order for a dividend (In re Whitehead, 2 N. B. R. 180; 1 Chi. Leg. News, 326; Fed. Cas. 17562; In re Lane, 2 N. B. R. 100; 3 Ben. 98; 1 Chi. Leg. News, 123; Fed. Cas. 8042); and the petitioning creditor, where the adjudication has been resisted, is entitled to "the same costs that are allowed by law to a party recovering in a suit in equity." (In re Sheehan, 8 N. B. R. 353; Fed. Cas. 12738.)

**Attorneys' fees.**—The claim of a common-law assignee for services as assignee and for attorneys' fees does not have priority (In re Lains, 16 N. B. R. 168; 1 N. W. Rep. (O. S.) 116; 6 Amer. Law Rec. 266; 24 Pittsb. Leg. J. 207; Fed. Cas. 7939); nor are attorneys entitled to payment as a preferred claim, out of the fund in the hands of an assignee, of fees for opposing a petition of involuntary bankruptcy. (In re New York Mail Steamship Co., 2 N. B. R. 170; Fed. Cas. 10211.) An attorney's fee for preparing the petition and schedules in bankruptcy is not a preferred claim. (In re Gies, 12 N. B. R. 179; 7 Chi. Leg. News, 379; 1 N. Y. Wkly. Dig. 101; Fed. Cas. 5407; In re Heirschberg, 1 N. B. R. 195; 1 Amer. Law T. Rep. Bankr. 123; Fed. Cas. 6329; In re Richard Handell, 15 N. B. R. 72; Fed. Cas. 6017.)

**Wages due workmen, clerks, etc.**—Assignee of an estate, against which there were debts due workmen more than enough to absorb the funds, engaged in litigation concerning the rights of the general creditors. It was held that the workmen should be first paid, and charges connected with litigation disallowed. (In re Sawyer, 16 N. B. R. 460; 2 Lowell, 551; 15 Alb. Law J. 280; Fed. Cas. 12396.) And debts for wages may be paid as soon as the assignee receives enough money for that purpose, if the general creditors agree. (In re Sawyer, 16 N. B. R. 460; 2 Lowell, 551; 15 Alb. Law J. 280; Fed. Cas. 12396; Ex parte Rockett, 15 N. B. R. 95; 2 Lowell, 522; Fed. Cas. 11977.) Upon proof of claims made by the father of a minor son, for the labor of such son, in the employment of the bankrupt within the six months next preceding the first publication of the notice of proceedings in bankruptcy, the court held that the father is entitled to be preferred (In re Harthorn, 4 N. B. R. 27; Fed. Cas. 6162); and an assignee for value of a workman's claim is entitled to prove the same in bankruptcy and receive the same preference which the assignor could have claimed. (In re Brown, 3 N. B. R. 177; 4 Ben. 142; Fed. Cas. 1974.) Where an employee is thrown out of employment by the bankruptcy of his employer, and has been paid for the time he actually worked, he is not entitled to priority in payment for the time during which he was unable to find other employment. (In re Pevear et al., 17 N. B. R. 461; Fed. Cas. 11053.) See PRIORITY UNDER FEDERAL LAWS, p. 371.

If liens have been acquired *bona fide* and are recognized by the state law, they have the same priorities as though no proceedings in bankruptcy had taken place. (Reed v. Bullington, 11 N. B. R. 408.) Where bankrupt employed convicts under contract with a state, the court held

that claim of state under such contract was entitled to preference. (*In re Southwestern Car Co.*, 19 N. B. R. 404; Fed. Cas. 13192.)

Where a voluntary assignment was set aside, only for the reason that proceedings in bankruptcy superseded it, the voluntary assignee is entitled to reasonable expenses and compensation for his services, where to allow it will not subject the estate to a double charge (*In re Kurth*, 17 N. B. R. 573; Fed. Cas. 7948); and where the plaintiff elected to sue the assignee for damages, he waived any claim he may have had to money in the assignee's hands, and is not entitled to priority over expenses. (*In re Oberhoffer*, 17 N. B. R. 546; 9 Benf. 485; Fed. Cas. 10396.) The preferred creditors can have a priority in payment only out of assets the debtor has, which would go to his assignee in bankruptcy. (*In re Chamberlin*, 17 N. B. R. 50; 9 Ben. 149; Fed. Cas. 2530.)

**Rent under state laws.**—The Bankrupt Act makes no preference in favor of a landlord, but, in its administration, it is the court's duty to enforce any lien he may have by virtue of the state law (*In re McConnell*, 9 N. B. R. 387; 10 Phila. 287; 31 Leg. Int. 61; 21 Pittsb. Leg. J. 107; Fed. Cas. 8712); but not where a distress warrant had not been issued (*Austin v. O'Reilly, Ass., etc.*, 12 N. B. R. 329; 2 Woods, 670; 2 Cent. Law J. 455; 1 N. Y. Wkly. Dig. 36; Fed. Cas. 665; *In re Butler*, 6 N. B. R. 501; 19 Pittsb. Leg. J. 146; 2 Pittsb. Rep. 369; Fed. Cas. 2236; *Austin v. O'Reilly*, 8 N. B. R. 129; Fed. Cas. 664); when sufficient goods remain on the premises occupied by the bankrupt to satisfy the rent on distress, the assignee should pay the amount due up to the time of surrender to the landlord. (*Longstreth v. Pennock et al.*, 7 N. B. R. 449; 9 Phila. 394; 30 Leg. Int. 29; 20 Pittsb. Leg. J. 107; Fed. Cas. 8488.)

**Rent before adjudication.**—At the time of the adjudication the bankrupts were indebted to the landlord for a year's rent, which was demanded of the assignee as a prior claim and was allowed. (*Austin v. O'Reilly, Ass., etc.*, 12 N. B. R. 329; 2 Woods, 670; 2 Cent. Law J. 455; 1 N. Y. Wkly. Dig. 36; Fed. Cas. 665; *In re Hoagland*, 18 N. B. R. 530; Fed. Cas. 6545.) Goods of a bankrupt merchant had been left in the store rented by him some months before the assignee took possession. Assignee immediately removed them. The court held that the owner of the store could claim what was a reasonable price for storage, but not the value of the store as a salesroom. (*In re The Lucius Hart Mfg. Co.*, 17 N. B. R. 459; Fed. Cas. 8592.) An assignee who knows nothing of a lease effected by the bankrupt is not bound by its covenants. There must be some unequivocal act of acceptance of said lease before the assignee can be held liable. (*In re Washburn*, 11 N. B. R. 66; Fed. Cas. 17211.)

Upon writ of error, where rent was claimed for a period terminating when the assignee took possession, it was held that it must be paid first out of the proceeds of the sale. (*Longstreth v. Pennock et al.*, 12 N. B. R. 95; 20 Wall. 575.) A judgment was obtained by a creditor before the

beginning of proceedings, and execution levied after the defendant was adjudged bankrupt. The levy was on personal property located on leased premises, and the debtor's landlord notified the sheriff that he claimed the rent due him out of the proceeds of the sale. The court held that the landlord was entitled to his lien for rent. (*Barnes' Appeal*, 18 N. B. R. 543; 91 U. S. 521. But see *In re Joslyn*, 8 N. B. R. 118; 2 Biss. 235; 2 Chi. Leg. News, 137; Fed. Cas. 7550.)

See also *COST OF PRESERVING ESTATE*, *ante*, p. 366.

**Priority of judgments.**—A judgment creditor may enforce his claim against property sold by the bankrupt before the commencement of the proceedings in bankruptcy (*Phillips v. Bowdoin*, 14 N. B. R. 43); and it has been held, under the act of 1867, that a judgment rendered before the adjudication in bankruptcy has priority in payment out of the bankrupt's estate, on which it was a lien, over the fees and costs of the bankruptcy proceedings. (*In re Hansbright*, 2 N. B. R. 157; 2 Amer. Law T. Rep. Bankr. 61; 1 Chi. Leg. News, 201; Fed. Cas. 5973.) A proper levy of an execution consummates the lien of the execution creditors, and they are entitled to be paid their claim out of the proceeds arising from the sale of the goods afterwards taken by the marshal in bankruptcy. (*In re Hughes et al.*, 11 N. B. R. 452; 7 Chi. Leg. News, 162; Fed. Cas. 6843.) S. made an assignment for benefit of creditors. On the following day R. obtained judgment against S., upon which execution was issued and levied upon goods in possession of assignee. Subsequently S. was adjudged bankrupt, and assignee in bankruptcy under written agreement between himself and R. took possession of property levied on without prejudice to R.'s rights. The court held that R. acquired no priority of right by the execution levy. (*Reed v. McIntyre, Ass., etc.*, 19 N. B. R. 45; 98 U. S. 507.)

**Priority of attachment.**—A judgment creditor who has made a levy on property of a bankrupt attached for its full value, subject to such attachment, is not entitled to priority as against the assignee. (*In re Steele et al.*, 16 N. B. R. 105; 7 Biss. 504; Fed. Cas. 13345.)

**Sheriff's costs in attachment.**—A sheriff is not entitled to fees and expenses for the attachment, levy and custody of property of a debtor which were attached at the suit of creditors before his adjudication in bankruptcy, but upon which judgment was not rendered until subsequently (*In re Williams*, 2 N. B. R. 79; 8 Amer. Law Rev. 374; 1 Amer. Law T. Rep. Bankr. 107, 118; Fed. Cas. 17705), unless by the state law such costs are a lien against the property attached. (*Gardner v. Cook, Ass.*, 7 N. B. R. 346; Fed. Cas. 5226.) A bankrupt's property was attached within four months prior to bankruptcy. The sheriff turned the property over to the marshal with the understanding that whatever the sheriff's rights were as to costs should remain the same as if the goods were in his possession, and evidence showed that the sheriff had preserved the goods. The court held that his claim was provable against

the estate, but on the ground only of having preserved the goods. (In re Jenks, 15 N. B. R. 301; Fed. Cas. 7276; Ex parte Holmes, 14 N. B. R. 493; Fed. Cas. 6631.)

**Priority of mortgage.**—A landlord petitioned to have his rent paid in full out of the proceeds of certain property of the bankrupt, on which he claimed a lien by the terms of his lease, which he alleged operated as a mortgage. The court held that he had no lien, the lease not having been recorded. (In re Dyke & Marr, 9 N. B. R. 430; Fed. Cas. 4227.) And where a creditor claims a lien by virtue of a judgment recovered on November 5, 1866, but which was not recorded in the clerk's office until October 16, 1867, and the creditor holds a mortgage executed by bankrupt, and recorded April 7, 1867, the court held the mortgage lien has priority over the judgment. (In re Lacy, 4 N. B. R. 15; 3 Amer. Law T. 215; 1 Amer. Law T. Rep. Bankr. 226; Fed. Cas. 7970.) And a mortgagee cannot claim that a deficiency after sale on his mortgage shall be paid in preference to the claims of other creditors. (In re Snedaker, 4 N. B. R. 43.) A mortgage given by a bankrupt before commencement of bankruptcy proceedings to secure an existing debt and future advances of goods is valid. (Schulze, Ass. v. Bolting, 17 N. B. R. 167; 8 Biss. 174; Fed. Cas. 12489.) Where there are two mortgages, and the proceeds of a sale in bankruptcy are sufficient to pay off the first mortgage, the senior mortgage is entitled to be paid in full. (In re Bartenbach, 11 N. B. R. 61; 2 Amer. Law T. Rep. (N. S.) 33; Fed. Cas. 1068.) And the claim of the wife's separate estate is prior to that of judgment creditors, where the separate estate has been used to improve property of the bankrupt, with an agreement that the property is to be deeded to the wife, and the claim should be paid out of the proceeds of such property. (In re Campbell, 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2348.) A surety on a note who takes an assignment of a bond for title to land to indemnify himself has priority over judgment creditors of the assignor. (In re Reynolds, 16 N. B. R. 158; Fed. Cas. 11724.)

**Security—Banks.**—Where a savings bank claimed a preference, by way of lien, on the assets of an insolvent bank created under a statute which provides "That upon its becoming insolvent, after paying its circulation, the assets should be first applied to paying deposits made with it by savings banks," the court held that such provision was a mere rule of distribution, creating no lien; that such preferences are not protected by the Bankrupt Act. (In re Stuyvesant Bank, 9 N. B. R. 318; 1 Cent. Law J. 83; Fed. Cas. 13584.) A check given by A., who becomes bankrupt before presentation, entitles the payee to so much of the money of the bankrupt as the check calls for (Fourth Nat. Bank of Chicago v. Bank, 10 N. B. R. 44); but one bought of a banker, afterwards bankrupt, a check on his bank. The check was not presented for payment until after bankruptcy of the drawer, when payment was refused. The court held that the funds in the bank passed to the assignee of the bankrupt,

and payee was not entitled to priority of payment. (In re Smith, 15 N. B. R. 459; 2 Cin. Law Bul. 119; Fed. Cas. 12990.) The obligation incurred by a banker, in the ordinary course of business with his customers, is not fiduciary in its nature, but the liability only of an ordinary debtor, and his assignee will not be required to pay, out of funds belonging to the bank, the amount of a note, on the ground that it had been placed in the bank for collection, the customer's account having been overdrawn at the time (In re Bank of Madison, 9 N. B. R. 184; 5 Biss. 515; Fed. Cas. 890); and a depositor whose special deposit has been appropriated by the depositor, a bankrupt, is not entitled to have the debt paid in full, but can only share *pro rata* with other creditors. (In re King, 9 N. B. R. 140.) Where, prior to bankruptcy, the holder of a note deposits it with an attorney and subsequently draws orders requesting him to pay divers sums to the payees out of the proceeds of the note, the holders of such orders are entitled to payment out of such proceeds in preference to the assignee (In re Smith, 16 N. B. R. 899; 10 Chi. Leg. News, 86; 5 N. Y. Wkly. Dig. 822; Fed. Cas. 12992); and if the bankrupts carry on a brokerage business, for which they keep a separate account, a party whose bonds were sold is entitled to payment in full, if the amount in the bank is more than sufficient to pay claims against the brokerage department. (Voight v. Lewis, Trustee, 14 N. B. R. 543; 11 Phila. 511; 83 Leg. Int. 402; 9 Chi. Leg. News, 65; 8 N. Y. Wkly. Dig. 421; 24 Pittsb. Leg. J. 54; Fed. Cas. 16969.) A consignor, being a creditor of a bankrupt, filed a petition seeking the establishment of a trust fund upon the ground that certain of the property sold by the assignee had been consigned to the bankrupt. The petition was dismissed upon the ground that the claim must be shared with the other creditors. (In re Coan & Ten Broeke Carriage Mfg. Co., 12 N. B. R. 208; 6 Biss. 815; 7 Chi. Leg. News, 260; Fed. Cas. 2915.) All valid liens which exist on the property of a bankrupt when the proceedings in bankruptcy are commenced are preserved and enforced and allowed to be paid out of the proceeds of the property on which they are liens. (In re Grinnell & Co., 9 N. B. R. 85; 7 Ben. 42; 21 Pittsb. Leg. J. 82; Fed. Cas. 5830.) A creditor fully secured may file a petition in bankruptcy without expressly waiving his preference therein, but the better practice is to do so. (In re Stansell, 6 N. B. R. 183; Fed. Cas. 18293.)

**Under federal laws.**—Liens set up against the proceeds of the sale of a vessel owned by a bankrupt shall be allowed in the order of dates, except maritime liens, which have been held to be entitled to priority. (In re Scott, 8 N. B. R. 181; 18 Pittsb. Leg. J. 58; 1 Abb. (U. S.) 336; 13 Int. Rev. Rec. 129; 2 Chi. Leg. News, 398; Fed. Cas. 12517.)

The United States is not obliged to exhaust its securities for a claim before enforcing its rights to priority. (United States v. Lewis et al., 18 N. B. R. 33; 2 Wkly. Notes Cas. 31; 22 Int. Rev. Rec. 39; 32 Leg. Int. 371; 23 Pittsb. Leg. J. 34; Fed. Cas. 15595.) The preference, after that

of the United States, of the state in which proceedings are pending, exists because Congress so enacts; and if Congress had not so enacted, or if it should afterwards enact otherwise, the preference would cease. (*Six Penny Savings Bank et al. v. Estate of the Stuyvesant Bank*, 1 N. B. R. 399; *Fed. Cas.* 12919.)

**Under internal revenue laws.**—A claim of the United States against bankrupts to recover the value of goods imported and entered contrary to law is a provable debt against the estate. (*Barnes, Ass., v. United States*, 12 N. B. R. 526; 21 *Int. Rev. Rec.* 212; 1 *N. Y. Wkly. Dig.* 177; *Fed. Cas.* 1023; *In re Rosey*, 8 N. B. R. 509; 6 *Ben.* 507; *Fed. Cas.* 12066. And if a party purchases an imported article duty free, and is compelled to pay the duty in order to get possession of the article, he is entitled to be subrogated to the priority of the United States. (*In re Kirkland Chase & Co.*, 14 N. B. R. 139; 2 *Hughes*, 208; *Fed. Cas.* 7843.)

c. In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

Two classes of creditors arise where a confirmation of a composition is set aside or a discharge revoked, i. e., those whose claims accrue prior and those subsequent to the confirmation or discharge. The latter class, acting in good faith on the strength of the confirmation or discharge, give new credit to the debtor, and the purpose of this provision is to permit the application of the subsequently-acquired property together with the estate at the time the composition was confirmed or the adjudication was made, to the payment in full of such claims to the exclusion of those antedating such confirmation or discharge. The residue of the estate, if any, after the payment of such claims, should be applied to the payment of the debts which accrued prior to the adjudication. The purpose of this provision is self-evident. It is only by placing this sanctity upon the adjudication that it will cause full faith and credit to be given it. It permits the transaction of business with persons who have been discharged or who have entered into a composition with creditors, without fear as to the title they may convey, and without fear of loss.

A composition may be set aside or a discharge revoked on the ground of fraud. (Sees. 13, 15.)



**Sec. 65. Declaration and payment of dividends.**—*a.* Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

[Act of 1867. Sec. 27. . . . That all creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate pro rata, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: *Provided*, That any debt proved by any person liable, as bail, surety, guarantor, or otherwise, for the bankrupt, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct.]

Referees are required to declare dividends and prepare and deliver to the trustees dividend sheets showing the dividends prepared and to whom payable (sec. 89—1), while the trustee must pay such dividends within ten days after having been declared. (Sec. 47—9.) The debts entitled to priority of payment are set forth under section 64, and liens, etc., given in good faith, under section 67. Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim, if rejected in whole, or the proportional part thereof, if rejected only in part. (Sec. 57, 4.)

**Payment of dividends.**—Perfect equality among creditors is the fundamental principle upon which the Bankrupt Act proceeds; anything that defeats that is a fraud upon the law. (In re Palmer, 14 N. B. R. 437; 2 Hughes, 177; Fed. Cas. 10678.) Upon making proof, all who had valid subsisting claims at the time the bankrupt proceedings commenced shall be permitted to participate in the fund so long as there is anything to distribute. (In re Maybin, 15 N. B. R. 468; Fed. Cas. 9387.) The holder of a note given by a firm and also by an individual member of the firm is entitled to receive dividends from the estates of both. (Emery et al. v. Canal National Bank, 7 N. B. R. 217; 8 Cliff. 507; 6 West. Jur. 515; 5 Amer. Law T. Rep. (U. S. Cts.) 419; Fed. Cas. 4446.) On objections by assignee to a foreign creditor claiming dividend on his debt without regard to the amount collected by a judgment and levy had against the bankrupt subsequent to the adjudication, held, that he must account to

assignee for such amount, and could only have dividend on the original debt. (*In re Bugbee*, 9 N. B. R. 258; Fed. Cas. 2115.) The trustee of a bankrupt corporation, who as creditor has proved his debt against said corporation, cannot be deprived of his right to share in the dividend merely because he has rendered himself individually liable for the debt of said corporation. (*Bristol, Ass. v. Sanford*, 13 N. B. R. 78; 12 Blatchf. 841; Fed. Cas. 1893.) A creditor held certain notes indorsed by the bankrupt, upon which payments were made by the makers after the creditor had proved the notes against the estate of the bankrupt. Held, that such payments must be deducted from the sum on which a dividend could be demanded. (*In re Weeks*, 13 N. B. R. 263; 8 Ben. 265; Fed. Cas. 17349.) A debt was proved against the estate of the bankrupts on a note made by them and indorsed. After proof was made, the indorser paid a portion of the amount due and were released by the holder from further liability. Held, that the creditor should receive dividends on the whole amount, holding any excess of dividends in trust for the surety. (*In re Ellerhorst & Co.*, 5 N. B. R. 144; 6 Amer. Law Rev. 162 Fed. Cas. 4381.)

**Dividends not allowed.**—If a creditor of a bankrupt include in his claim items which are valid, and also items which he knows to be illegal, supporting his claim for the entire amount by a false oath, he is not entitled to any dividends whatever on any part of his claim. (*Marratt, Ass. v. Atterbury*, 11 N. B. R. 225; 3 Dill. 444; 2 Cent. Law J. 11 Fed. Cas. 9102.) A firm filed a petition with a register, setting up that they had performed certain services for the bankrupt, for which services they held a note past due, and prayed that the assignee be directed to pay them out of the funds for dividend. They had not presented the claim either on or prior to the day appointed for the declaration of the dividend, and the court held that the fund could not be re-opened to pay such claim. (*In re Smith*, 15 N. B. R. 97; 1 Tex. Law J. 42; Fed. Cas. 12989.)

**Payment suspended.**—The assignee can withhold payment of dividend to a creditor declared upon the net proceeds of firm property until recovery or final determination of suit brought by assignee against said creditor to recover amount due a member of said firm. (*Atkinson v. Kellogg*, 10 N. B. R. 535; 7 Chi. Leg. News, 9; Fed. Cas. 613.) A judgment from which an appeal is taken on writ of error before commencement of proceedings in bankruptcy is a provable debt; but no dividends will be paid to the judgment creditor until judgment on the writ of error. (*In re Sheehan*, 8 N. B. R. 315; Fed. Cas. 12737.) The assignee may withhold payment of a dividend on a particular claim where its declaration was unauthorized. (*In re Herrick et al.*, 13 N. B. R. 312; Fed. Cas. 6420.) Where a dividend was ordered on a claim for professional services rendered the bankrupt, the court restrained the register and assignee from making or paying such dividend until further order, to enable those in

terested to apply to vacate the order for dividend. (In re New York Mail Steamship Co., 3 N. B. R. 78; Fed. Cas. 10212.)

**Interest.**—Interest on claims proved will be allowed from day of filing of petition when funds in hands of assignee are sufficient. (In re Hagan, 10 N. B. R. 883; 6 Ben. 407; Fed. Cas. 5898.) Proof of claim by C. was objected to by trustee, but upon re-examination was sustained. On motion for interest on dividend, held, that creditor was entitled to interest at rate allowed by laws of state. (In re Kitzinger et al., 19 N. B. R. 238; Fed. Cas. 7862.) If a surplus remain after the payment of all claims at the amount computed to be due on the date of adjudication, creditors may be allowed interest from the date of adjudication to the time of payment of dividends. (In re Bank of North Carolina, 13 N. B. R. 180; 1 N. Y. Weekly Dig. 127; Fed. Cas. 895; In re Town et al., 8 N. B. R. 40; Fed. Cas. 14112.)

**Miscellaneous.**—The distribution of the assets of a bankrupt cannot be interfered with by the process of a state court. (In re Bridgeman, 2 N. B. R. 84.) Any money remaining in the hands of the assignee after the payment in full of creditors who have proven their claims must be distributed among such creditors as are named in the bankrupt's list, although they have failed to make proof of their claims. (In re James, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 7175.) When but a single creditor proves his claim, he is entitled to be paid in full as far as the assets are sufficient for that purpose, and if there be any residue the same must be applied to the payment of such creditors as the bankrupt has acknowledged to hold valid claims. (In re Haynes, 2 N. B. R. 78; 1 Gaz. 78; Fed. Cas. 6269.) If an offer of composition is accepted, the payment is for the satisfaction of the debts, and not as a dividend from the estate in bankruptcy. (In re Lissberger, 18 N. B. R. 280; Fed. Cas. 8884.) Appeal having been taken from order allowing creditor interest upon unpaid dividends, creditor procured order directing trustee to deposit dividend, interest and costs. Held, that such deposit was not a setting aside of money as constituting creditor's dividend. (In re Kitzinger et al., 19 N. B. R. 807; Fed. Cas. 7863.) A debtor gave a creditor his accommodation notes for an amount greater than the debt, and the notes were discounted and afterwards proved against the debtor's estate in bankruptcy. Held, that an assignee could set off against the dividend due the creditor the dividend paid on the notes and recover from the creditor the balance of the dividend paid, and that in case of a composition the same right obtained. (In re Purcell, 18 N. B. R. 447; Fed. Cas. 11470.)

b. The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be,

allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

[Act of 1867. SEC. 28. . . . The court shall thereupon [on the discharge of the assignee] order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts.]

c. The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

[Act of 1867. SEC. 28. . . . No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter.]

d. Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

e. A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

**Sec. 66. Unclaimed dividends.—a.** Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

Instead of permitting the unclaimed dividends to be indefinitely tied up, and perhaps ultimately inuring to the benefit of the depository in which held, pending a claimant therefor, this section provides a determinate period for making claim, after which such dividends are to be distributed to the creditors who have not been paid in full, and the surplus given the bankrupt. Provision for the declaration and payment of dividends is found in section 65.

Dividends cannot be attached in the hands of the assignee (In re Bridgman, 2 N. B. R. 84; Jackson v. Miller, 9 N. B. R. 148); but creditor may have receiver of debtor's property, who may appear in the bankruptcy proceedings as representative of debtor. (Jackson v. Miller, 9 N. B. R. 148.)

Amounts remaining in the hands of the assignee, after discharge of a bankrupt against whose estate no debts were proved and there is reasonable cause to believe none will be proved, will upon proper petition be paid to the bankrupt. (In re Hoyt, 3 N. B. R. 18; Fed. Cas. 6906; citing In re James, 2 N. B. R. 78; Fed. Cas. 7175; In re Haynes, 2 N. B. R. 78; Fed. Cas. 6269.) The right of a bankrupt who, prior to commencement of proceedings in bankruptcy, had brought suit, reverts to him to continue such action after the trustees in bankruptcy had completed their trust, filed their final accounts and had been discharged, nothing having been done by said trustees on the original suit in the interval. (Conner v. Southern Express Co., 9 N. B. R. 188.)

**b.** Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

**Sec. 67. Liens.—a.** Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

[Act of 1867. Sec. 20. . . . When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt

owing to him from the bankrupt he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property. . . .]

**Claims otherwise invalid are not liens.**—A lien authorized by a statute in compliance with certain provisions concerning record and notice is not complete until the statutory requisites are complied with; and if these are postponed until after the filing of a petition in bankruptcy, on which an adjudication follows, no lien will exist (In re Sabin, 12 N. B. R. 142; Fed. Cas. 12194; 1 N. Y. Wkly. Dig. 101; In re Brunquest, 14 N. B. R. 529; 7 Biss. 208; Fed. Cas. 2055; In re Dyke & Marr, 9 N. B. R. 430; Fed. Cas. 4227); and one who has taken an inchoate security, *e. g.*, a confession of judgment, cannot, on learning later of the insolvency of the debtor, perfect the same by entering it of record. (Clark v. Iselin et al., 9 N. B. R. 19; 10 Blatchf. 204; 21 Pittsb. Leg. J. 82; Fed. Cas. 2825.) The docketing of a judgment on a day that is declared a holiday by statute is void and confers no lien, for the term "holiday" imports *die non juridicus* (In re Worthington, 14 N. B. R. 388; 3 Cent. Law J. 526; 8 Chi. Leg. News, 363; 14 Alb. Law J. 153; Fed. Cas. 18052); and a judgment recovered after a general assignment for the benefit of creditors, without preference, creates no lien on the property so assigned, although such assignment be subsequently set aside upon application of an assignee in bankruptcy (Belden, Ass. v. Smith et al., 16 N. B. R. 302; Fed. Cas. 1242); also a judgment which, by the laws of the state in which it was recovered, is not a valid and binding lien, will not be recognized as a lien in proceedings in bankruptcy (In re Cozart, 3 N. B. R. 126; Fed. Cas. 3313); and where goods taken under an execution have been relinquished before filing a petition in bankruptcy, no lien is created in favor of the judgment creditor. (Sage, Jr., v. Wynkoop, Ass., 16 N. B. R. 363; Fed. Cas. 12215.) A mechanic's lien for work done and material furnished, which is not perfected prior to filing of petition in bankruptcy, will not be recognized. (In re Dey, 3 N. B. R. 81; 3 Ben. 450; Fed. Cas. 3870.)

A chattel mortgage of a stock of goods, which permits the mortgagor to dispose of the goods in due course of trade, is fraudulent as to other creditors, and is void as to them, without reference to the good faith of the mortgagee, or the intentions of the mortgagor as to fraud (In re Foster, 18 N. B. R. 64; 10 Chi. Leg. News, 315; Fed. Cas. 4964; Second Nat. Bank v. Hunt, 4 N. B. R. 198; Kane, Ass. v. Rice, 10 N. B. R. 469; Fed. Cas. 7609; Robinson et al. v. Elliott, Ass., 11 N. B. R. 553; 22 Wall. 513; Smith, Ass., etc. v. Ely et al., 10 N. B. R. 553; Fed. Cas. 13044); and a chattel mortgage void as against creditors under state law and under which mortgagee had taken possession, having reasonable cause to believe debtor insolvent, is void as against assignee in bankruptcy (Harvey, Ass. v. Crane, 5 N. B. R. 218; 2 Biss. 496; 3 Chi. Leg. News, 341; Fed. Cas. 6178); but a chattel mortgage of a stock of goods, executed by one co-

partner and assented to by the other partners, containing a stipulation that the mortgagors are to remain in possession of the goods as agents of the mortgagee, and account to him monthly for all sales of the mortgaged property until the indebtedness is paid, is valid and does not indicate fraud *per se*. (Hawkins, Ass., v. Bank, 2 N. B. R. 108; 1 Dill 462; Fed. Cas. 6244.) A mortgage of goods and chattels situate partly in New York and partly in New Jersey, and recorded only in the first-named state, is valid against creditors of the mortgagor as to that portion of the property situate in New York, and void as to that portion situate in New Jersey. (In re Soldiers' Business Messenger and Dispatch Co., 2 N. B. R. 162; 3 Ben. 204; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 18163.)

B., in 1857, not in debt, conveyed certain realty by deed absolute on its face, but in reality in trust to his wife. In 1867 B. was adjudged a bankrupt, until which time he remained in possession of the realty, and the property was sold by the assignee. In 1869 the deed was recorded and a bill was filed to set aside the sale. The bill was dismissed, the omission to record being a fraud on subsequent creditors. (Barker v. Smith et al., 12 N. B. R. 474; 2 Woods, 87; 2 Amer. Law T. Rep. (N. S.) 886; Fed. Cas. 986.) A personal claim of indebtedness against bankrupt's estate does not constitute a lien upon property of the estate in the hands of one making such claim. (Sedgwick, Ass., v. Casey, 4 N. B. R. 161; 4 Ben. 562; Fed. Cas. 12610; In re Krogman, 5 N. B. R. 116; Fed. Cas. 7936.)

b. Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditors for the benefit of the estate.

c. A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation

of bankruptcy, or (3) that such lien was sought and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

The trustee, upon his appointment, is vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt; among other things, of the property transferred by him in fraud of his creditors. (Sec. 70, a.) "Adjudication" means the date of the entry of the decree declaring the party bankrupt, or if appealed, the date when the decree is confirmed. (Sec. 1—2.) A person is "insolvent" under the act when the aggregate of his property, excluding property conveyed, transferred, concealed or removed, or permitted so to be, with intent to defraud, hinder or delay creditors, shall not, at a fair valuation, be sufficient to pay his debts. (Sec. 1—15.) The computation of time in this section would in all probability be controlled by the provisions of section 31.

**Attachments within four months.**—The conditional lien acquired by the levy of an attachment or of its being laid in the hands of a garnishee may be diverted by the operation of a general bankrupt or a local insolvent law, if the language of the act be sufficiently clear to indicate that purpose. (*Corner v. Miller et al.*, 1 N. B. R. 98.) Proceedings in bankruptcy dissolve an attachment issued within four months immediately preceding the commencement of such proceedings (*Duffield, Ass., etc. v. Horton et al.*, 19 N. B. R. 13; *Bennington v. Lowenstein et al.*, 1 N. B. R. 157; *Fed. Cas.* 10938; *Appleton v. Stevers, Ass.*, 10 N. B. R. 515; *In re Ellis*, 1 N. B. R. 154; *Fed. Cas.* 4400; *Kaiser et al. v. Richardson*, 14 N. B. R. 391; *Duffield et al., Ass., v. Horton et al.*, 16 N. B. R. 59; *Miller v. Bowles*, 10 N. B. R. 515; 58 N. Y. 263; *Bank of Columbia v. Overstreet et al.*, 13 N. B. R. 154); so, on motion in a state court, an attachment issued within four months before the beginning of bankruptcy proceedings will be dissolved, although judgment has been entered and proceeds of sale paid to plaintiff by the sheriff (*Dickerson v. Spaulding et al., Ass.*, 15 N. B. R. 313); and if proceedings in bankruptcy are commenced within four months after the issuing of an attachment, a judgment entered therein afterward is void (*King v. Loudon*, 14 N. B. R. 383); and an officer in posses-



sion of property under writ of attachment cannot refuse to deliver it until his fees are paid. (In re Stevens, 5 N. B. R. 296; 2 Biss. 373; 10 Amer. Law Reg. (N. S.) 523; Fed. Cas. 13392.) But an attachment is not dissolved by institution of proceedings in bankruptcy if the attachment was placed in the garnishee's hands more than four months prior to the commencement of the proceedings (Hatch v. Seely, 13 N. B. R. 330); and where a judgment is recovered in an attachment suit and process is issued for sale of the property, the lien relates back to the date of the attachment. (Hudson, Ass., v. Adams, 18 N. B. R. 102; 3 Cin. Law Bul. 1066; Fed. Cas. 6833.)

Plaintiff attached personal property of debtor more than four months before proceedings in bankruptcy. The defendant procured a receiptor and the property went into his hands. The defendant was adjudged bankrupt. Held, that plaintiff was entitled to a judgment *in rem*, and could levy execution upon the money which might be collected from the receiptor. (Batchelder v. Putnam, 13 N. B. R. 404.) A creditor levied an attachment on a debtor's property within four months before proceedings in bankruptcy were commenced. A composition was proposed by the debtor and adopted and confirmed. The defendant then filed a special plea in the attachment suit, setting up the facts, having theretofore moved to quash the attachment. It was held that the attaching creditor's debt was extinguished and the attachment would fall. (Miller v. Mackenzie et al., 13 N. B. R. 496.) Where an attaching creditor, under the provisions of the state law, pays off a mortgage, upon the dissolution of the attachment by bankruptcy he will be entitled to repayment out of the proceeds resulting from the sale of the property in the hands of the assignee. (Whithed et al. v. Pillsbury and Titcomb, Ass., 13 N. B. R. 241; Fed. Cas. 17572.)

**Costs when attachment is dissolved.**—An attaching creditor whose attachment is set aside by bankruptcy proceedings is not entitled to his costs out of the bankrupt estate, unless it is shown that the attachment was employed in aid of the proceedings and to the benefit of the creditors generally (In re Irons & Coon, 18 N. B. R. 95; Fed. Cas. 7067); and it has also been held that where an attachment is dissolved by proceedings in bankruptcy, the costs that accrued under the attachment prior to the filing of the bankrupt's petition are not a valid lien upon the property in controversy. If incurred at defendant's request, however, they might be. (In re Preston, 6 N. B. R. 545; Fed. Cas. 11394.)

**Execution liens.**—A judgment taken contrary to the Bankrupt Act is not void unless a petition in bankruptcy is filed by or against the debtor within four months from the entry of the judgment. (In re Fuller, 4 N. B. R. 29; 18 Pittsb. Leg. J. 82; 2 Chi. Leg. News, 373; Fed. Cas. 5143.) An execution creditor claimed a lien on money in the hands of the marshal, by virtue of proceedings supplementary to execution commenced prior to bankruptcy, but which, before appointment of receiver,

were restrained by the bankrupt court. The court held the claim must be disallowed; that until the appointment of a receiver his right is not a lien within the meaning of the bankrupt law. (*In re Wheeler et al.*, 18 N. B. R. 385; 26 Pittsb. Leg. J. 84; Fed. Cas. 17490.) The seizure of goods under a warrant of seizure by the United States marshal, where an adjudication of bankruptcy has been had upon a creditor's petition, will divest the lien of a prior unlevied execution (*In re Tills and May*, 11 N. B. R. 214; Fed. Cas. 14052); but if there has been a recovery of judgment before bankruptcy, the sheriff may go on and sell, but the bankrupt court has the right to cause the sale to be made under its supervision and control. (*Allen & Co. v. Montgomery et al.*, 10 N. B. R. 503.)

**Effect of notice on creditor's lien.**—Where a creditor, having reasonable cause to believe debtors insolvent, seizes their property on execution, the assignee may recover the property or its value, the creditor being allowed expenses of sale, but not sheriff's fees. (*Sedgwick, Ass., v. Millward*, 5 N. B. R. 347; Fed. Cas. 12618.) A party who has sufficient notice to put him upon inquiry is chargeable with knowledge of all facts which by a proper inquiry he might have ascertained. (*Brooke, Ass., v. McCracken*, 10 N. B. R. 461; 7 Chi. Leg. News, 10; Fed. Cas. 1932.) But the fact that an affidavit was filed and execution issued and levied on the same day that proceedings in bankruptcy were begun does not show collusion. (*Witt, Ass., v. Hereth*, 13 N. B. R. 106; 6 Biss. 474; 8 Chi. Leg. News, 41; 1 N. Y. Wkly. Dig. 436; Fed. Cas. 17921.) The words "in contemplation of bankruptcy" do not require evidence of actual intent to file a petition in bankruptcy; it is sufficient if the bankrupt knew at the time that he would be unable to pay his debts, and would be compelled to cease business. (*In re Lawson*, 2 N. B. R. 125; Fed. Cas. 8151.)

Almost the entire capital of a debtor was money borrowed from his brother, who brought suit for an amount that would necessarily absorb the whole of it. Circumstantial evidence showed that the suit, apparently antagonistic, was collusive, the debtor being at the time insolvent, and the brother having reasonable cause to believe him so, the lien thus created was held void. (*In re Baker*, 14 N. B. R. 433; 14 Alb. Law J. 294; Fed. Cas. 763.) Very slight circumstances indicating the existence of an affirmative desire, on a bankrupt's part, to give a preference, or to defeat the operation of the act, may, by giving color to the whole transaction, make void a lien against his property. (*Wilson v. City Bank of St. Paul*, 9 N. B. R. 97; 17 Wall. 473.)

**Liens cannot be acquired after petition filed.**—The bankrupt law, in providing for the dissolution of liens, only operates on liens pending at the time bankruptcy proceedings are commenced (*Shelley et al. v. Elliston, Ass.*, 18 N. B. R. 375; 26 Pittsb. Leg. J. 92; Fed. Cas. 12750); but after filing of petition, creditor cannot acquire a lien on property of bankrupt by attachment, judgment and levy, and this is not affected by pendency of composition proceedings. (*In re Tift*, 19 N. B. R. 201; Fed.

Cas. 14084.) A sale of the debtor's land on execution and levy after the beginning of bankruptcy proceedings will not pass title against the assignee, although the judgment lien was created prior to the proceedings (Davis v. Anderson, 6 N. B. R. 146; Fed. Cas. 3623); and after the filing of a petition in bankruptcy, no valid lien can be acquired upon the property of the bankrupt by proceedings in the state court; and an assignee is not bound to go into a state court to defend such a suit, the action being a nullity as to him. (Stuart v. Hines, 6 N. B. R. 416; Winters et al. v. Claitor et al., 18 N. B. R. 533.) No lien can be acquired or enforced by such proceedings commenced after petition in bankruptcy is filed, though in cases where jurisdiction has been previously acquired by state courts of a suit brought in good faith to enforce a valid lien upon property, such jurisdiction will not be divested (In re Wynne, 4 N. B. R. 5; 2 Amer. Law T. Rep. Bankr. 116; Fed. Cas. 18117); and the fact that creditors levied on property of the alleged bankrupt after the filing of the petition gives them no rights as against petitioning creditors different from that of creditors at large. (In re Lawrence et al., 18 N. B. R. 516; 26 Pittsb. Leg. J. 148; Fed. Cas. 8133.) Property of a bankrupt which he is entitled under a state law to hold exempt from levy and sale cannot be sold after he has filed his petition in bankruptcy to satisfy a prior levy thereon (In re Griffin, 2 N. B. R. 85; 2 Amer. Law T. Rep. Bankr. 28; 1 Chi. Leg. News, 103; Fed. Cas. 5818); but where, before a petition was filed in bankruptcy, the bankrupt was indebted for material furnished to be used in the construction of a building, and after filing petition, but within three months after completion of building, a lien was filed, the lien was held valid. (In re Coulter, 5 N. B. R. 64; 2 Sawy. 42; 2 Amer. Law T. Rep. Bankr. 257; 2 Chi. Leg. News, 377; 4 Amer. Law T. 131; Fed. Cas. 3276.)

If the landlord has no lien on the bankrupt tenant's goods as against the bankrupt on the day the petition in bankruptcy is filed, he has none subsequently as against the assignee (In re Butler, 6 N. B. R. 501; 19 Pittsb. Leg. J. 146; 3 Pittsb. Rep. 369; Fed. Cas. 2236); and the levying of a distress warrant after the commencement of proceedings in bankruptcy, but before the appointment of the assignee, does not give the landlord a lien on the property levied upon as against the assignee. (Morgan v. Campbell, Ass., 11 N. B. R. 529. *Contra*, In re Appold, 1 N. B. R. 178; 7 Amer. Law Reg. (N. S.) 624; 6 Phila. 469; 25 Leg. Int. 180; 1 Amer. Law T. Rep. Bankr. 83; Fed. Cas. 499.)

When liens obtained through judicial proceedings are valid.—When not absolutely prohibited by the Bankrupt Act, liens and preferences are entitled to the same protection from the bankrupt courts as other legal rights. (Barron et al. v. Morris, Ass., 14 N. B. R. 371; Fed. Cas. 1055.) In general it was held under the act of 1867 that the law did not affect the lien of a judgment (Haworth v. Travis et al., 13 N. B. R. 145; In re Gold Mountain Mining Co., 15 N. B. R. 545; 3 Sawy. 601;

Fed. Cas. 5515; *In re Wimm*, 1 N. B. R. 181; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876); and the filing of a petition in bankruptcy subsequent to delivery of an execution, but before levy was made, did not divest the creditor's lien on the debtor's property, arising out of the judgment and execution. (*Bartlett, Ass. v. Russell*, 16 N. B. R. 211; 4 Dill. 267; 9 Chi. Leg. News, 377; 6 Amer. Law Rec. 13; 4 Law & Eq. Rep. 197; 24 Pittsb. Leg. J. 206; Fed. Cas. 1080.) Whatever is declared and treated as a valid levy and a valid and subsisting lien by the state laws and courts will be so treated by the bankruptcy court. (*Armstrong, Ass. v. Rickey Bros.*, 2 N. B. R. 150; 1 Chi. Leg. News, 145; 2 Amer. Law T. Rep. Bankr. 65; Fed. Cas. 546.) A petition in bankruptcy does not render void an honest execution, levied upon the debtor's property before the filing of his petition. The court will interfere with the exercise of the right of the sheriff only where its exercise would materially affect the interest of the general creditors (*Goddard v. Weaver*, 6 N. B. R. 440; 1 Woods, 257; Fed. Cas. 5495); and it was held under the act of 1867 that an execution issued against the property of a debtor, when the creditor had not reasonable cause to believe that the debtor was insolvent, was valid (*In re Black and Secor*, 2 N. B. R. 65; Fed. Cas. 1458); and that judgments should not be set aside as fraudulent and void merely because the plaintiff had exacted a high rate of interest, especially when at the time of entering the judgments valuable collateral securities were surrendered to debtor by plaintiff for a large part of said judgments. (*Shaffer v. Fritchery & Thomas*, 4 N. B. R. 179; Fed. Cas. 12697.) It was also held that a judgment note given for a valuable consideration more than four months before the commencement of proceedings in bankruptcy, on which judgment was entered and execution issued within four months of the commencement of proceedings in bankruptcy, was valid (*Sleek et al. v. Turner, Ass.*, 10 N. B. R. 580; *Piper v. Baldy*, 10 N. B. R. 517; 10 Phila. 247; 31 Leg. Int. 316; 22 Pittsb. Leg. J. 29; Fed. Cas. 11179); and judgment obtained against an insolvent debtor without fraud or collusion would be as conclusive evidence of the claim and its amount as if given against a solvent debtor (*Catlin v. Hoffman*, 9 N. B. R. 342; 2 Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521); also where a creditor advanced money to pay a valid execution and took a judgment for his own claim and the money so advanced, an execution on such judgment would be void as to the old claim but good as to the advance. (*Lothrop v. Drake et al.*, 13 N. B. R. 472; 91 U. S. 516.) An officer is bound by his return, and where such return shows an attachment it shows also a lien upon the property attached; and where such attachment was made more than four months prior to the commencement of bankruptcy proceedings, the plaintiff is entitled to a judgment against the specific property returned upon the writ. (*Bowman v. Harding*, 4 N. B. R. 5.) It was also held that a passive non-resistance on the part of an insolvent debtor, to a suit against him, and the creditor's knowledge of such in-

solvent condition, would not make void a judgment and levy upon the former's property, nor violate the act; nor would such lien be displaced by subsequent bankruptcy proceedings, though commenced within four months after levy, or rendition of the judgment. (*Wilson v. City Bank of St. Paul*, 9 N. B. R. 97; 17 Wall. 472.)

The executor of a judgment creditor moved in the state court for an execution. The debtor had been discharged in bankruptcy between the date of the judgment and the date of the motion, and the creditor had not proved in bankruptcy, although the claim was scheduled and notice was sent to the testatrix. Plaintiff claimed that the judgment roll of the superior court created a lien which the bankruptcy proceedings did not dissolve. It was held that the Bankrupt Act did not divest the lien. (*Blum, Executor, v. Ellis*, 13 N. B. R. 845.)

It was held under the former act that a purchaser at sheriff's sale, after proceedings commenced in bankruptcy, where the levy was made prior thereto, would acquire a good title notwithstanding the judgments under which the sale took place were afterwards declared void as in fraud of the act. (*Zahn v. Fry et al.*, 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 81 Pittsb. Leg. J. 155; Fed. Cas. 18198.) The judgment of a court setting apart property as a homestead exemption creates a lien on the property so allotted, and the judgment so rendered remains intact, though the fruits thereof may not be reaped by the parties to be benefited until an appellate court shall have determined its validity. (*In re Moseley, Wells & Co.*, 8 N. B. R. 306; Fed. Cas. 9868.) Where action is brought to reach choses in action, or property not subject to sale on execution, the weight of authority holds that a lien is acquired by the mere commencement of the action (*Johnson, Ass., v. Rogers et al.*, 15 N. B. R. 1; 5 Amer. Law Rec. 536; 14 Alb. Law J. 427; Fed. Cas. 7408); and the mere commencement of an action in the nature of a creditor's bill gives to the creditor an equitable lien upon the property and things in action of the debtor, whether in his hands or in the hands of a fraudulent transferee. (*Stewart v. Isidor et al.*, 1 N. B. R. 129.)

**Valid attachment liens.**—It has been held that an attachment upon *mesne* process is such a lien as can be enforced in a state court, notwithstanding bankruptcy proceedings, by a qualified judgment, limited in its operation to the property attached, and not to be enforced against the other property or the person of the bankrupt (*Stoddard v. Locke et al.*, 9 N. B. R. 73); and an attachment by trustee process creates a lien on funds in the hands of a trustee, after service on him and without notice to the principal debtor, which will be saved when made the prescribed length of time before commencement of bankruptcy proceedings. (*In re Peck*, 16 N. B. R. 43; 9 Ben. 169; Fed. Cas. 10686.) Where petitioners instituted an attachment suit against bankrupts, attached goods subject to prior attachments, obtained judgment, execution issued, and levy was made subject to prior attachments, it was held that they had acquired a lien on the goods of the bankrupt, giving priority, and not affected by

the dissolution of the attachments (In re Steele et al., 16 N. B. R. 105; 7 Biss. 504; Fed. Cas. 13345); and where a sheriff had custody of the goods of the bankrupt by virtue of an attachment, and other creditors obtained judgment and issued execution, the subsequent executions created a lien on all the goods in the sheriff's hands not covered by the first attachment. (In re Nelson, 16 N. B. R. 312; 9 Ben. 238; Fed. Cas. 10100.)

One A. began an action by attachment against his debtor, and immediately a petition in bankruptcy was filed by other creditors. Debtor applied for a composition. A. obtained judgment. Composition was effected and approved by the court. A. had notice of the proceedings, but refused to accept payment under the composition. His attachment was not dissolved by the composition, there having been no adjudication. (In re Shields, 15 N. B. R. 533; 24 Pittsb. Leg. J. 190; 4 Dill. 588; 4 Cent. Law J. 557; Fed. Cas. 12784.) A bankrupt defendant may file a bond to dissolve an attachment, although it was issued more than four months before the commencement of the proceedings in bankruptcy, and have the case continued to await his discharge (Braley v. Boomer et al., 12 N. B. R. 303); but where a defendant, after receiving his discharge in bankruptcy, filed a bond to dissolve an attachment existing upon his property more than four months prior to the commencement of the bankruptcy proceedings, it was held that the bond was filed too late, and judgment was rendered for plaintiff. (Johnson v. Collins, 12 N. B. R. 70.) Where the attachment is a security and the bankrupt is a mere accommodation acceptor, the creditor has a right to proceed against the bankrupt for his debt in bankruptcy, and also against the other parties to the bill under his attachment, until he has received the full amount of his debt, for it is a security obtained by the creditor against other parties to the bill by a proceeding *in invitum*. (In re Oram, 1 N. B. R. 133; 1 Hask. 89; 1 Amer. Law T. Rep. Bankr. 65; Fed. Cas. 3343.)

**Enforcement of valid liens.**—Where a judgment creditor has made a levy upon the property of the bankrupt before filing of the petition, and after commencement of proceedings procures the sheriff to sell the property upon his execution, the court may set aside the sale or confirm it and permit the creditor to retain the proceeds, where the creditor acted under a misapprehension of his duty and the property brought its full value. (In re Hufnagel, 12 N. B. R. 554; Fed. Cas. 6837.) A judgment creditor may enforce his claim against property sold by the bankrupt before the commencement of the proceedings in bankruptcy, although his attorney was allowed a compensation for bringing assets into the bankrupt court (Phillips v. Bowdoin, 14 N. B. R. 43); and if he levies upon personalty and subsequently abandons his levy by permitting the property to go back into the hands of the defendant, it was held that he might enforce his lien against land sold by the bankrupt before the commencement of the proceedings in bankruptcy, and need not follow the personalty into the hands of the assignee. (Winship v. Phillips, 14 N. B. R. 50.)

In an action by lien-holders a judgment may be rendered limiting the plaintiffs to a sale of the land, where it appears that, by reason of their discharge in bankruptcy, the defendants are released from personal liability on the judgment. (*Reed v. Bullington*, 11 N. B. R. 408.) The docketing of a transcript of judgment on a holiday is not void, in the absence of state legislation to the contrary, and establishes a lien on the real estate of the debtor in the county where filed (*In re Worthington*, 16 N. B. R. 52; 7 Biss. 455; 1 N. W. Rep. (O. S.) 109; 9 Chi. Leg. News, 846; 4 Law & Eq. Rep. 78; 16 Alb. Law J. 63; 23 Int. Rev. Rec. 233; 2 Cin. Law Bul. 189; Fed. Cas. 18051); but a judgment creditor cannot claim the jurisdiction of the bankrupt court for the collection of his debt, fully secured by the only lien on real estate. (*In re Avery v. Johann*, 8 N. B. R. 36; 3 Amer. Law T. Rep. Bankr. 92; 4 N. B. R. 143; 1 Chi. Leg. News, 261; Fed. Cas. 675.)

Under the act of 1867, where an execution creditor was sought to be restrained in the circuit court, and during the proceedings the adjudication of bankruptcy was made, and the property levied upon was delivered by the sheriff to the assignee, subject to such lien as might be sustainable, it was held that the execution creditors might proceed summarily in the district court in bankruptcy upon their asserted right of priority, or they might require the assignee to proceed to sustain his asserted adverse right (*In re Hafer et al.*, 1 N. B. R. 168; 6 Phila. 474; 25 Leg. Int. 164; Fed. Cas. 5897); and that a levy of an execution made by indorsing the levy upon the writ, placing a custodian in charge of the goods, and receiving a key to the store in which the goods were kept, was a good levy and consummated the lien of the execution creditors, and they were entitled to be paid the amount of their claim out of the proceeds arising from the sale of the goods afterwards taken by the marshal in bankruptcy. (*In re Hughes et al.*, 11 N. B. R. 452; 7 Chi. Leg. News, 162; Fed. Cas. 6848; *Swope et al. v. Arnold*, Ass., 5 N. B. R. 148; Fed. Cas. 18702.)

d. Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

[Act of 1867. Sec. 14. . . . That no mortgage of any vessel or any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any State, shall be invalidated or affected hereby.]

**No distinction between various kinds of liens.**—The bankrupt law makes no distinction between the different kinds of liens. If the law of the state recognizes a lien by judgment, or in favor of a mechanic, or by mortgage, or in any other form, each is respected in the bankrupt court according to its dignity. Whenever the creditor has the legal right to have a debt satisfied from the proceeds of property, or before the property can be otherwise disposed of, it is a lien on such property for the security of the debt. (*Meeks v. Whatley*, 10 N. B. R. 498.) All valid liens which exist on the property of a bankrupt when the proceedings in bankruptcy are commenced are preserved and will be respected by the bankruptcy court, and enforced and allowed to be paid out of the proceeds of the property on which they are liens. (*In re Grinnell & Co.*, 9 N. B. R. 35; 7 Ben. 42; 21 Pittsb. Leg. J. 82; Fed. Cas. 5830.)

**Mortgages valid against bankrupt's estate.**—While the present law is more or less different from the act of 1867, the following decisions are given as showing the position then taken by the courts: Security by mortgage out of the usual course of business, given to creditors who are innocent, with reasonable cause to be so, of the insolvency of the debtor, will be valid (*In re Lee v. Savings Institution*, 3 N. B. R. 53; 1 Chi. Leg. News, 370; Fed. Cas. 8188), or a mortgage to secure a debt and to secure mortgagee as surety for mortgagor (*Milner v. Meek, Ass., et al.*, 17 N. B. R. 83; 95 U. S. 252), or a mortgage executed by an insolvent debtor, to secure an actual loan, made and taken in good faith (*Campbell, Ass., v. Waite et al.*, 16 N. B. R. 93; 9 Ben. 166; Fed. Cas. 2374); and, unless the mortgagee of property to secure present or future advances is guilty of some fraud or preference, he may hold his security against the assignee, however insolvent the mortgagor may have been at the time the mortgage was given. (*Ex parte Ames, In re McKay and Aldus*, 7 N. B. R. 230; 1 Lowell, 561; Fed. Cas. 323.)

Where a man makes a settlement upon his wife in fraud of his creditors, and his wife mortgages the property, for value, to one innocent of the fraud, though the settlement be afterwards set aside, the mortgagee's rights will be protected. (*Sedgwick v. Place*, 10 N. B. R. 28; Fed. Cas. 12621.) The Bankrupt Act does not prohibit a person from loaning money at legal rates to one whom he has reason to believe to be insolvent, and taking security for such loan, provided it be made *bona fide* and without intent, or participation in any intent, to defraud creditors or defeat the Bankrupt Act. (*Darley v. Boatman's Sav. Inst.*, 4 N. B. R. 195; 4 Amer. Law T. Rep. 117; 1 Leg. Op. 146; 1 Amer. Law T. Rep. Bankr. 251; Fed. Cas. 3571.) A debtor was charged, on petition of creditors, with having executed a mortgage with intent to prefer other creditors. The mortgage was security for personal property obtained from the mortgagees, with which he furnished a spacious mansion which he had leased and converted into an infirmary and bathing establishment. It was held a valid mortgage. (*Potter et al. v. Coggeshall*, 4 N. B. R. 19; Fed. Cas. 11322.)



A chattel mortgage was executed by a debtor in favor of his creditor. Afterwards the debtor indorsed on the back of the mortgage an agreement that it should cover property acquired after the execution of the mortgage. It appeared that the indorsement was procured for the purpose of delaying creditors. It was held that the indorsement was void, but did not deprive the mortgagees of their rights under the mortgage. (*Whithed et al. v. Pillsbury et al.*, 13 N. B. R. 241; Fed. Cas. 17572.) A bankrupt within four months before bankruptcy borrowed some money, and gave therefor a mortgage on his stock in trade, which secured this loan, also a prior note which was already secured, and third, an overdue note, which was taken up and held by the indorser, at whose request it was included in the mortgage. The stock was sold by the assignee. The court held that the mortgage could be severed, and the valid part was ordered paid. (*In re Stowe*, 6 N. B. R. 429; Fed. Cas. 13518.) A executed a mortgage to B, the condition being that the former should within nine months pay all the notes on which the latter was liable as indorser, and any and all notes given for A.'s accommodation, on which B might be so liable "during the pendency of the deed." B still retained the mortgage when A. was adjudicated bankrupt. The mortgage was security for notes outstanding at that time. (*In re Griffiths*, 8 N. B. R. 179.)

A bankrupt sold bonds which were in his hands, owned by his sister, and took up a mortgage note with the proceeds and used the balance himself. He was indebted to his sister at the time, and he held other bonds owned by her. These bonds he pledged for his debts. Money was paid by him to her from time to time during six years following, and this was charged against the interest on the bonds. The court held that the sister was entitled to a lien equivalent to a mortgage lien, and that she was entitled to a decree of foreclosure. (*Dewey v. Kelton, Ass.*, 18 N. B. R. 217; Fed. Cas. 8850.) Where a mortgage is executed by a bankrupt to his nieces eighteen days before filing of petition in bankruptcy, but in pursuance of a parol agreement between the bankrupt and the guardians of the infants made fifteen months before, such agreement, based upon a valuable consideration, will be treated in equity as a mortgage. (*Burdick, Ass., etc. v. Jackson et al.*, 15 N. B. R. 318.)

**Invalid mortgages.** See subdivision *e, post*, p. 396.

**Enforcement of mortgagee's rights.**—Where no just cause for questioning the validity of the mortgage exists, the court in bankruptcy will entertain the summary petition of a mortgagee for the sale of the premises (*In re Saoochi*, 6 N. B. R. 497; 43 How. Pr. 252; Fed. Cas. 12200); and a court of equity in selling mortgaged premises free from incumbrances, remitting the lien-holders to the proceeds, at the suits of subsequent incumbrancers or other parties having a right in the equity of redemption, is only applying a principle frequently exercised in bankruptcy. (*Sutherland et al. v. Lake Superior Ship Canal, R. R. & Iron Co.*, 9 N. B. R. 296;

1 Cent. Law J. 127; Fed. Cas. 13643.) An action to foreclose a mortgage is not a doubtful remedy, and will not unreasonably delay the party or materially injure or prejudice his rights, and if a creditor has a mortgage on the bankrupt's homestead he may be required to exhaust that remedy before he can enforce his other remedies against the bankrupt's estate. (In re Sauthoff & Olson, 14 N. B. R. 364; 7 Biss. 167; 5 Amer. Law Rec. 178; 8 Chi. Leg. News, 370; 3 Cent. Law J. 544; 3 N. Y. Wkly. Dig. 96; Fed. Cas. 12379.) The court may grant leave to a mortgagee to foreclose in the usual way, making the assignees parties, or take upon itself the duty of ascertaining and liquidating the lien by a sale of the property mortgaged, and applying the proceeds in payment, and, if the latter course is pursued, is authorized to adjust the costs of the proceedings necessary to give effect to the specific lien. (In re Ellerhorst et al., 7 N. B. R. 49; 2 Sawy. 219; Fed. Cas. 4380.) It may direct the sale of property free from all incumbrances, but the right of a mortgagee who is not made a party to proceedings in the district court to sell the property is not affected by the proceedings. (Ray v. Brigham et al., 12 N. B. R. 145.) Where a mortgagee, having a valid claim by his mortgage against the property of the bankrupt, by petition to the bankrupt court asked an order that the assignee make sale of simply his right of redemption, the petition was dismissed. (Ferguson v. Peckham, 6 N. B. R. 569; 29 Leg. Int. 285; 6 Alb. Law J. 291; Fed. Cas. 4741.)

It has been held that a sale under a deed of trust in the nature of a mortgage, with a power of sale in a third party as trustee, executed by a debtor afterwards adjudicated a bankrupt, to be valid, must be by permission of the court after the creditor therein secured has proved his debt in the bankruptcy proceedings. (In re Davis, Ass., et al., 2 N. B. R. 125; 2 Amer. Law T. Rep. Bankr. 52; 1 Chi. Leg. News, 171; Fed. Cas. 3618.) A mortgagee must prove his debt in the bankruptcy court as a secured claim before he is entitled to apply to such court for leave to foreclose his mortgage in another court (In re Sabin, 9 N. B. R. 383; Fed. Cas. 12103); but if he does not prove his debt, he may enforce his mortgage in a state court, although the property be duly set apart to the bankrupt as exempt (Cumming v. Clegg, 14 N. B. R. 49; Hatcher v. Jones, 14 N. B. R. 387); though in an early case it was held that a creditor who holds a mortgage lien on real estate belonging to a bankrupt will be restrained from maintaining a foreclosure suit in a state court pending proceedings in bankruptcy (In re Snedaker, 3 N. B. R. 155); and a mortgagee may proceed to foreclose his mortgage in a state court if the assignee does not seek to redeem the mortgaged property, and the proceeding to foreclose is not absolutely void (Brown v. Gibbons, 13 N. B. R. 407); and where a mortgagee brought an action to enforce his lien after the mortgagor had been discharged in bankruptcy, the debt not having been proved in bankruptcy, it was held that the lien was not lost, but might be enforced. (Assignee of Wicks & Co. v. Perkins, 13 N. B. R. 208; 1 Woods. 383; Fed. Cas. 17615.)

The taking possession of property by a mortgagee and omission to sell within a reasonable time operates as a satisfaction of the debt to the extent of the value of the property at the time the mortgagee took possession. (In re Haake, 7 N. B. R. 61; 2 Sawy. 231; Fed. Cas. 5883.) A judgment creditor whose mortgage becomes a legal lien upon the whole interest of the mortgagor in such premises may buy and sell and purchase under his judgment, obtain a perfect title to the land, and may then enjoy the same as fully as the judgment debtor might have done had he continued to be the owner. (In re Williams, 14 N. B. R. 182; Fed. Cas. 17706.)

**Rights of pledgees.**—Under the act of 1867 it was held that the rights of a pledgee were not impaired or affected by any provisions of the bankrupt law (Yeatman v. New Orleans Sav. Inst., 17 N. B. R. 187; 95 U. S. 764); nor could proceedings in bankruptcy deprive creditors of their just possession of property held as security for a debt without discharging the debt (Davis et al. v. Railroad Co. et al., 12 N. B. R. 253; 1 Woods, 661; Fed. Cas. 3648); but that a pledgee's right to dispose of the property pledged was suspended from the filing of the petition in bankruptcy of the pledgor until the appointment of an assignee, in the same manner as if the pledgor had died intestate; the pledgee must wait for representatives to be appointed. (In re Grinnell & Co., 9 N. B. R. 29; 7 Ben. 42; 21 Pittsb. Leg. J. 82; Fed. Cas. 5830.) Where stock is pledged to secure call loans, leave of the court need not be obtained by the pledgee, on the pledgor's bankruptcy, to sell the pledged stock and pay the surplus into court. (In re Grinnell, 9 N. B. R. 187; Fed. Cas. 5839.)

**Landlord's lien.**—The Bankrupt Act makes no provision for a preference in favor of a landlord, but in its administration it is the court's duty to recognize and enforce any lien that he may have by virtue of the state law. (In re McConnell, 9 N. B. R. 387; 10 Phila. 287; 81 Leg. Int. 61; 21 Pittsb. Leg. J. 107; Fed. Cas. 6712.) It has been held that a landlord does not acquire a lien for rent on the goods of a bankrupt found on the demised premises. (Bailey, Ass. v. Loeb & Bro., 11 N. B. R. 271; 2 Woods, 578; 2 Cent. Law J. 42; Fed. Cas. 739.) When sufficient goods remain on the premises occupied by the bankrupt to satisfy the rent on distress, the assignee should pay the full amount due up to the time of his surrender to the landlord. (Longstreth v. Pennock et al., 7 N. B. R. 449; 9 Phila. 394; 80 Leg. Int. 29; 20 Pittsb. Leg. J. 107; Fed. Cas. 8488.) An assignee in bankruptcy is bound to respect the landlord's lien for rent (In re Trim v. Wagner et al., 5 N. B. R. 23; 2 Hughes, 355; Fed. Cas. 14174); and if a note taken for rent is not paid at maturity, the landlord is entitled to all his remedies for the security or collection of his claim in the same manner as if the note had never been given. (In re Bowne & Ten Eyck, 12 N. B. R. 529; 1 N. Y. Wkly. Dig. 100; Fed. Cas. 1741.)

A judgment was obtained by a creditor before the beginning of pro-

ceedings in bankruptcy and execution levied after the defendant was adjudged bankrupt. The levy was on personal property located on leased premises, and the debtor's landlord notified the sheriff that he claimed the rent due him out of the proceeds of the sale. It was held that the landlord was entitled to his lien for rent. (Barnes' Appeal, 13 N. B. R. 543; 91 U. S. 521; *In re Trim v. Wagner et al.*, 5 N. B. R. 23; 2 Hughes, 355; Fed. Cas. 14174.)

**Liens in general.**—An assignee in bankruptcy must recognize, as preferred claims, all valid liens against the bankrupt's estate. (*Gardner v. Cook*, Ass., 7 N. B. R. 346; Fed. Cas. 5226.) Where a creditor has a general lien, and the debtor, on receiving an advance or other accommodation from such creditor, deposits with him a particular security, specially intended or appropriated, or even pledged, to meet such advance or to cover such accommodation, the security is subject not only to a particular lien for the advance or liability, but also to the creditor's general lien. (*Sparhawk et al. v. Drexel et al.*, 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.) A creditor may take a decree *in rem* against property on which he has a lien, notwithstanding his debtor has been discharged as a bankrupt (*Stoddard v. Locke et al.*, 9 N. B. R. 71); and where certain bankrupts are stockholders in a national bank, the bank, being a creditor of said bankrupts, has a lien upon their stock to secure its claim. (*In re Bigelow et al.*, 1 N. B. R. 202; 2 Ben. 469; Fed. Cas. 1395.)

Where partnership debts are outstanding, on which a bankrupt's partner is liable, such partner has a lien on the real estate of the firm until the debts are paid, and to indemnify him in the event of his having to pay them (*Thrall v. Crampton*, Ass., 16 N. B. R. 261; 9 Ben. 218; Fed. Cas. 14009); and the lien of a factor for money advanced, his commissions and charges, is protected by the bankrupt law (*In re Roseberry et al.*, 16 N. B. R. 340; 8 Biss. 112; Fed. Cas. 12052; sec. 5128, R. S.); and a bank has a lien upon shares of its stock, deposited by a stockholder to secure a particular note, for all notes due from said stockholder to the bank, and this lien is not changed by the subsequent bankruptcy of the debtor (*In re Peebles*, 13 N. B. R. 149; 2 Hughes, 394; Fed. Cas. 10902); also the state has a lien for a debt due from a contractor for services of convicts, upon the tools and machinery of such contractor used on the prison premises in operating the contract; and such lien is not disturbed by the subsequent bankruptcy of the contractor. (*In re Burt & Towne*, 13 N. B. R. 137; 12 Blatchf. 252; Fed. Cas. 2209.) Where, upon the credit of a vessel, the charterer of it obtained supplies from a material-man and subsequently went into bankruptcy, and a composition was accepted by his creditors, the material-man's lien on the vessel, though he joined in the composition, was not discharged. (*The "Home"*, 18 N. B. R. 557; Fed. Cas. 6657.) A bankrupt sold bonds which were in his hands, owned by his sister, and took up a mortgage note with the proceeds and used

the balance himself. He was indebted to his sister at the time and he held other bonds owned by her. These bonds he pledged for his debts. Money was paid to her from time to time during six years following, and this was charged against the interest on the bonds. It was held that the sister was entitled to a lien equivalent to a mortgage lien, and that she was entitled to a decree of foreclosure. (*Dewey v. Kelton, Ass.*, 18 N. B. R. 217; Fed. Cas. 3850.)

A mere promise to pay out of a particular fund, when received, the promisor retaining control over the fund, and no notice being given to the person who is to pay it, does not operate as an equitable assignment or give the promisee a lien on such fund. (*Ex parte Tremont Nail Co.*, 16 N. B. R. 448; Fed. Cas. 14168.) A consignor whose property was sold prior to the bankruptcy and the proceeds mingled with the general assets has no lien or specific claim against the estate. He can only share it with the other creditors. (*In re Coan & Ten Broeke Carriage Mfg. Co.*, 12 N. B. R. 208; 6 Biss. 815; 7 Chi. Leg. News, 260; Fed. Cas. 2915.) Where an agistor kept cattle of the bankrupt for pasturing during the summer and fall months and for some time after proceedings in bankruptcy, and delivered them to the assignee without claiming a lien for the pasturage, who sold them at public auction, the agistor's lien under the state statute was lost or waived. (*In re Mitchell*, 8 N. B. R. 47; 5 Chi. Leg. News, 271; Fed. Cas. 9657.)

**Enforcement of liens in general.**—A sale by a creditor of property of a debtor, in his possession and on which he has valid lien, will not be disturbed by the fact that the debtor was insolvent and that the creditor knew that bankruptcy was imminent, provided there was no fraud and the property was sold for a fair price (*In re Roseberry et al.*, 16 N. B. R. 340; 8 Biss. 112; sec. 5128, R. S.; Fed. Cas. 12052); but a single creditor, whose debt is secured by a lien on bonds of a greater value than the amount of his debt, cannot be permitted to abandon all remedies open to him for the collection of his debt and claim the jurisdiction of the district court in bankruptcy for the purpose. (*In re Johann*, 4 N. B. R. 148; 2 Biss. 189; Fed. Cas. 7331.) Land which has been set apart by the assignee as exempt from the provision of the act against which there is a vendor's lien will be sold for the satisfaction thereof (*In re Perdue*, 2 N. B. R. 67; 2 West. Jur. 279; Fed. Cas. 10975); and a creditor whose lien overrides the exemption of the state law may enforce such lien without asserting his rights on the hearing of the debtor's application in bankruptcy. (*Bush v. Lester et al.*, 15 N. B. R. 86.) Where trust property does not remain in specie, but has been made way with by the trustee, the *cestui que trust* has no longer any specific remedy against any part of his estate in case of bankruptcy or insolvency, and must come in *pari passu* with other creditors, and prove against the trust estate for the amount due. (*In re King*, 9 N. B. R. 140.)

Where liens on the property of a bankrupt are valid, and exceed in

value the real estate incumbered by them, there is no necessity for the exercise of the powers of a bankrupt court. (In re Dillard, 9 N. B. R. 8; 2 Hughes, 190; 6 Amer. Law T. Rep. 490; 21 Pittsb. Leg. J. 82; Fed. Cas. 3912.) If the right of a creditor and that of a debtor to redeem property sold under an execution are distinct and independent under the state law, the bankruptcy of the debtor does not affect the right of the creditor. (Trimble v. Williamson, 14 N. B. R. 53.)

**Priority of liens.**—If liens have been acquired *bona fide* and are recognized by the state law, they have the same priorities and dignity as though no proceedings in bankruptcy had taken place; and where no action has been taken by the assignee or creditor to deal with the property in the bankrupt court, the state court has jurisdiction to make the lien available. (Reed v. Bullington, 11 N. B. R. 408.) A prior lien gives a prior claim, and the district court may ascertain and liquidate a lien. (In re Winn, 1 N. B. R. 181; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876.) Where a certain creditor claims a lien by virtue of a judgment against the bankrupt recovered November 5, 1866, but which was not recorded in the clerk's office until October 16, 1867, and a creditor holds a mortgage executed by bankrupt and recorded April 7, 1867, the mortgage lien has priority over the judgment (In re Lacy, 4 N. B. R. 15; 3 Amer. Law T. 215; 1 Amer. Law T. Rep. Bankr. 226; Fed. Cas. 7970); and if there are two mortgages, and the proceeds of a sale in bankruptcy are sufficient to pay off the first mortgage as well as costs and expenses, the senior mortgagee is entitled to be paid in full the same as he would in a case of a sale by way of foreclosure of the mortgage. (In re Bartenbach, 11 N. B. R. 61; 2 Amer. Law T. Rep. (N. S.) 33; Fed. Cas. 1068.) Liens set up against the proceeds of the sale of a vessel owned by a bankrupt shall be allowed in the order of their dates, except strictly maritime liens, which shall have priority. (In re Scott, 3 N. B. R. 181; 9 Amer. Law Reg. (N. S.) 349; 18 Pittsb. Leg. J. 53; 12 Int. Rev. Rec. 129; 2 Chi. Leg. News, 398; Fed. Cas. 12517.) The owner of a vessel gave a mortgage to A. on one-half of her to secure a promissory note. Subsequently he gave a mortgage to B. on three-fourths of her to secure another note. The vessel was sold, the owner being bankrupt, and the proceeds were not sufficient to pay the second note in full, although the first could be. On the question of the distribution it was held that the mortgage to A. attaches to first and second quarters; mortgage to B. is a first mortgage on third and fourth quarters and a second mortgage on the second quarter. A. to be paid in full from the first quarter (since this was sufficient), and the balance of this quarter to go to the assignee; the other three quarters to be paid to B. (this amount being still insufficient to settle B.'s mortgage in full). (In re Ship "Edith," 6 N. B. R. 449; 5 Ben. 432; Fed. Cas. 4282.)

See also cases under subdivision *c* of this section.

**Effect of proof on liens.** See sec. 57.

a. That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

[Act of 1867. SEC. 14. . . . That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title of all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding

the commencement of said proceedings: . . . And all the property conveyed by the bankrupt in fraud of his creditors . . . shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee.]

**Invalid mortgages.**—If an insolvent debtor transfers his property to another and the latter executes a mortgage thereon to secure a creditor, the transfer may be set aside. (*Gibson, Ass. v. Dobie et al.*, 14 N. B. R. 156; 5 Biss. 198; Fed. Cas. 5394.) And a sale made by a creditor secured by deed of trust, after commencement of proceedings in bankruptcy, without permission of the bankrupt court, will be set aside (*Smith v. Kehr*, 7 N. B. R. 97; 2 Dill. 50; 6 West. Jur. 451; Fed. Cas. 13071); or a mortgage executed by a bankrupt after commencement of proceedings in bankruptcy may be summarily set aside upon petition of the assignee, without resort to equity (*In re Sims*, 16 N. B. R. 251; Fed. Cas. 12888); also a mortgage to secure a sale that contains no provisions by which the collections and proceeds of sale shall be applied to the purposes of the conveyance or to the payment of the debt to be secured, or indemnity to be provided, or by its re-investment to augment the trust fund, the want thereof being inconsistent with the alleged purpose of the conveyance, is void as to creditors in bankruptcy. (*Smith, Ass. v. McLean et al.*, 10 N. B. R. 260; Fed. Cas. 13074.) And a mortgage of all the property of a firm and its members, given to secure a loan with which to pay debts due and unpaid, and in anticipation of others soon to mature, for a number of which mortgagee is responsible as surety, is void (*Scammon, Ass. v. Cole et al.*, 3 N. B. R. 100; 1 Hask. 214; Fed. Cas. 12433); as is one given to secure a pre-existing debt, where the mortgagee has reasonable cause to believe that the mortgagor is insolvent; and it is immaterial whether such security is given voluntarily or in pursuance of a previous promise, made when the debt was contracted, and when the debtor was insolvent (*In re Graham, Ass. v. Stark et al.*, 3 N. B. R. 92; 3 Ben. 520; 2 Chi. Leg. News, 73; Fed. Cas. 5676); or a mortgage given to secure a pre-existing debt contracted outside of the ordinary course of business of the debtor (*Tuttle v. Truax*, 1 N. B. R. 169; Fed. Cas. 14277); or if a bankrupt agrees with a creditor to pay his claim in full on condition that the creditor will agree to a discharge, and after the discharge a note is made for the difference between the claim and the dividend, which the wife of the bankrupt signs and secures by a mortgage on her separate property without knowledge of the agreement, the mortgage and note are void (*Blasdel v. Fowle et al.*, 17 N. B. R. 412); as is also a mortgage given to secure two promissory notes that have been indorsed by mortgagees, the mortgage being given less than four months next preceding the filing of a petition in bankruptcy (*Scammon, Ass. v. Cole et al.*, 5 N. B. R. 257; 3 Cliff. 472; Fed. Cas. 12433); or a chattel mortgage



and bill of sale which, under the state statute of frauds, are void except between the parties thereto. (*Edmondson v. Hyde*, 7 N. B. R. 1; 2 Sawy. 205; 5 Amer. Law T. Rep. (U. S. Cts.) 380; Fed. Cas. 4285.)

A party who afterwards became a bankrupt, in return for a loan executed a bill of sale of certain property to the lender, but took back a writing in the nature of a lease. There was no change of possession, and the instruments were not recorded. It was held that the transaction amounted to a mortgage and was invalid as against creditors. (*In re Gurney*, 15 N. B. R. 873; 7 Biss. 414; 9 Chi. Leg. News, 255; 4 Law & Eq. Rep. 28; Fed. Cas. 5373.)

Delivery of goods under a mortgage itself fraudulent is a violation of the Bankrupt Act, and the goods cannot be held as a pledge. (*Robinson et al. v. Elliott, Ass.*, 11 N. B. R. 553; 22 Wall. 518.) Although a court of equity would not lend its aid to a bankrupt to enforce a trust created by him for the purpose of concealing property from creditors, it would to his assignee for the benefit of creditors. (*Tiffany v. Boatman's Saving Institution*, 9 N. B. R. 245; 18 Wall. 875.) A sale of mortgaged premises by a trustee under a power of sale contained in the mortgage, made after the mortgagor has become bankrupt, is void *per se* (*Lockett v. Hoge*, 9 N. B. R. 167; Fed. Cas. 8444); and a person may be summarily ordered to release a mortgage taken upon property claimed as a homestead after a decree declaring the premises not to be exempt. (*In re Boothroyd et al.*, 15 N. B. R. 368; Fed. Cas. 1653; 2 Cin. Law. Bul. 139.)

**Mortgages.** See subdivision *d*, *ante*.

**General assignments.**—As to whether a general assignment is necessarily in fraud of the Bankrupt Act, the decisions are conflicting, some courts holding that upon its face a voluntary general assignment bears conclusive evidence that the assignor's intention is to prevent the property transferred being distributed under the Bankrupt Act (*In re Kasson*, 18 N. B. R. 379; Fed. Cas. 7617; *Platt v. Preston et al.*, 19 N. B. R. 241; Fed. Cas. 11219; *In re Smith*, 8 N. B. R. 98; 4 Ben. 1; 3 Amer. Law T. 7; 1 Amer. Law T. Rep. Bankr. 147; Fed. Cas. 12974); others holding that a general assignment made by insolvent debtors under the state law for the benefit of creditors, the same being untainted by fraud either against creditors or against the act, is valid (*Sedgwick, Ass., v. Place et al.*, 1 N. B. R. 204; 1 Amer. Law T. Rep. Bankr. 97; 84 Conn. 553; Fed. Cas. 12622; *In re Arledge*, 1 N. B. R. 195; Fed. Cas. 538); and that an assignment made for the benefit of all the assignor's creditors equally, in good faith, without fraud or intent to contravene any provision of the Bankrupt Act, or to hinder, delay or defraud creditors, is not a violation of the spirit and intention of the act (*Haas, Ass., v. O'Brien*, 16 N. B. R. 508); also that where a debtor makes an assignment of his property for the benefit of all his creditors, with intent to secure an equal distribution of all the debtor's property among his creditors, it is not necessarily a conveyance of the property with intent to defeat or delay the operation of the Bankrupt Act (*In re Marter*, 12 N. B. R. 185; Fed.

Cas. 9143); and that a deed of assignment is not rendered void by the fact that the debtor threatened bankruptcy unless a certain amount was accepted in satisfaction. (In re Walker, 18 N. B. R. 56; Fed. Cas. 17063.)

Where a creditor is about to get a judgment against his debtor, and the latter makes a general assignment under a state insolvent law for the benefit of his creditors, this is a conveyance to defeat or delay the operations of the Bankrupt Act (In re Langley, 1 N. B. R. 155); as is a general assignment of all property to a private assignee for the benefit of creditors, a few days before filing a petition in bankruptcy (In re Brodhead, 2 N. B. R. 93; 3 Ben. 106; 1 Chi. Leg. News, 107; Fed. Cas. 1918); and an assignment for the benefit of creditors, pending proceedings to have a debtor declared a bankrupt, is a fraud upon the bankrupt law, and such assignee will be enjoined from making any transfer of the assignor's property. (In re Skoll, 16 N. B. R. 175; 1 Month. Jur. 350; 1 N. W. Rep. (O. S.) 108; 9 Chi. Leg. News, 377; 6 Amer. Law Rec. 15; 1 Tex. Law J. 42; 4 Law & Eq. Rep. 196; 24 Pittsb. Leg. J. 207; Fed. Cas. 12926.) It has been held that a power of revocation, inserted in an assignment made by a debtor for the benefit of his creditors, would render such assignment constructively fraudulent, and therefore void. (Jones, Ass., v. Clifton, 18 N. B. R. 125; 17 Amer. Law Reg. (N. S.) 713; 6 Reporter, 324; 7 Cent. Law J. 522; Fed. Cas. 7453.)

Where a general assignment is made in fraud of the Bankrupt Act, it may be set aside if proceedings are brought within four months (In re Temple, 17 N. B. R. 345; 4 Sawy. 62; Fed. Cas. 13925); but except as against the assignee in bankruptcy, an assignment for the benefit of creditors is not void, although it gives priority to certain creditors. (Shryock & Rhodes, Ass., v. Bashore, 13 N. B. R. 481; Fed. Cas. 12820; Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.) A bank made an assignment under the laws of Pennsylvania. The assignee brought suit on a note payable to the bank. The defendant raised the question of the validity of the assignment, because contrary to the provisions of the Bankrupt Act. It was held that such objection could only be raised by a creditor of the bank and plaintiffs were entitled to judgment. (Shryock et al., Ass., v. Bashore, 15 N. B. R. 283.) Creditors cannot be heard to allege that an assignment is fraudulent because of facts of which they were fully informed, where they have concurred in the execution of assignment. (Johnson, Ass., v. Rogers et al., 15 N. B. R. 1; 5 Amer. Law Rec. 536; 14 Alb. Law J. 427; Fed. Cas. 7108.) But it is said that where a creditor has accepted a dividend under an assignment, he has a right to disaffirm the act, on discovering the assignment to be fraudulent, by tendering back what he has received. (Johnson, Ass., v. Rogers et al., 15 N. B. R. 1; 5 Amer. Law Rec. 536; 14 Alb. Law J. 427; Fed. Cas. 7108.)

**Conveyances to wife or children.**—A husband out of debt may settle upon his wife such portion of his estate as he pleases, if done in good

faith, and not to defraud subsequent creditors (*In re Jones et al.*, 9 N. B. R. 556; 6 Biss. 68; 6 Chi. Leg. News, 271; Fed. Cas. 7444); but a husband, when largely indebted, cannot make a voluntary donation, or even a voluntary conveyance, to his wife, to the prejudice of his creditors (*Kehr et al. v. Smith, Ass.*, 10 N. B. R. 49; 20 Wall. 81; *Pratt v. Curtis*, 6 N. B. R. 139; Fed. Cas. 11375); and a conveyance by a husband, in embarrassed circumstances, of his real estate to trustees for the use of his wife, in consideration of property and money of hers which he had converted to his own use, the wife to have no power of disposition over the property during her life, and not by will without consent of the wife being reserved to the grantor and the trustees, is void; and the property so conveyed is liable for the husband's debts existing at the commencement of proceedings in bankruptcy (*Fisher v. Henderson et al.*, 8 N. B. R. 175; Fed. Cas. 4830); and though one commences a settlement on his wife with an honest intent, as by buying a lot, but continues the same project with a fraudulent intent, as by building a house and furnishing it, the whole transaction will be set aside (*Sedgwick v. Place*, 10 N. B. R. 28; Fed. Cas. 12631); also a loan by an insolvent father to his son, who makes a gift of the amount of the loan to his mother, by the purchase of a house in her name, is a fraud upon the creditors of the father. (*In re Aldred*, 3 N. B. R. 61; 1 Chi. Leg. News, 389; Fed. Cas. 4323.) Objection was made to the discharge of a bankrupt on the ground that, while insolvent, he had conveyed property to his wife. His conveyance of the property was likely to prevent his meeting his obligations. It was shown that twenty years before his wife had advanced money to him under a verbal promise of repayment and the money had been used to obtain credit in his business. The conveyance was held in fraud of creditors. (*In re Antisdal*, 18 N. B. R. 289; Fed. Cas. 490.) A conveyance by a father to his sons, in consideration of his support, is fraudulent as to his creditors and would be a cause of bankruptcy at the instance of creditors. (*In re Johann*, 4 N. B. R. 148; 2 Biss. 139; Fed. Cas. 7331.)

**Invalid conveyances in general.**—All transfers made to defeat the operation of the Bankrupt Act are absolutely void so far as they in any manner stand in the way of enforcing its provisions, where the proceedings are instituted within the time prescribed. (*Stevenson et al. v. McLaren et al.*, 14 N. B. R. 403; *In re Tomes et al.*, 19 N. B. R. 36; Fed. Cas. 14084; *In re Black et al.*, 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457; *In re Byrne*, 1 N. B. R. 122; 7 Amer. Law Reg. (N. S.) 499; 1 Amer. Law T. Rep. Bankr. 123; 15 Pittsb. Leg. J. 315; Fed. Cas. 2370.) A conveyance of the whole of a trader's property, or of the whole with a colorable exception made to a creditor, as a security for a pre-existing debt, is fraudulent and void, not only because he thereby deprives himself of the power of carrying on his trade, and withdraws his effects from the reach of other creditors, but because such a conveyance must either be fraudulent, kept secret, or produce

an immediate absolute bankruptcy (*Rison v. Knapp*, 4 N. B. R. 114; 1 Dill 186; Fed. Cas. 11861); also, if an individual, being in debt, makes a voluntary conveyance of his entire property, it constitutes fraud. Such rule does not apply to a conveyance by a person free from embarrassments and without reference to future responsibilities. If the circumstances clearly show a fraudulent intent the conveyance is void as to all creditors. (*Keating v. Keefer*, 5 N. B. R. 133; 4 Amer. Law T. 162; 1 Amer. Law T. Rep. Bankr. 266; Fed. Cas. 7635.) And even though other considerations may also have induced the conveyance, if one motive prompting a conveyance by one member of a firm to the other of his interest in the firm is the hindrance and defeat of creditors, the conveyance is fraudulent at common law, and is denounced by the provisions of the Bankrupt Act (*Burrill, Ass., v. Lawry*, 18 N. B. R. 367; 11 Chi. Leg. News, 33; 24 Int. Rev. Rec. 342; Fed. Cas. 2199), as is a conveyance, absolute upon its face, of property which the grantor, who is in failing circumstances, secretly reserves the right to possess and occupy for a limited period under a parol agreement as part of the consideration. (*Lukins v. Aird*, 2 N. B. R. 27; 24 Wall 78.) And a conveyance by deed executed more than four months prior to commencement of proceedings in bankruptcy, but recorded within that period, the local law providing that such deed takes "effect as to subsequent purchasers and all creditors only from the time of record" (*Thornhill & Co. v. Link*, 8 N. B. R. 521; Fed. Cas. 13993); or an assignment made by an insolvent debtor to a creditor whose attorney is also attorney for the bankrupt and for another creditor. (*In re Meyer*, 2 N. B. R. 137; 1 Chi. Leg. News, 210; Fed. Cas. 9515.) But sales or transfers of any character, declared void by the bankrupt law, and a fraud upon it, are only void against persons claiming under proceedings in bankruptcy or in the course of administration of a bankrupt's estate in a court of bankruptcy. (*Berryman v. Allen*, 15 N. B. R. 113.)

The assignee may bring suit in the circuit court to set aside as fraudulent a transfer made by the bankrupt to another person and believed to be for the purpose of defrauding the creditors, even if the property may have been seized by the marshal and been transferred by him to the assignee; and the circuit court may issue an injunction to restrain proceedings in a state court against the assignee (*Kellogg, Ass., v. Russell et al.*, 11 N. B. R. 121; 11 Blatchf. 519; Fed. Cas. 7666); and where it appeared that the bankrupts fraudulently put into the hands of the defendant certain sums of money, which defendant invested in stocks, after the adjudication of the bankrupts, at their request, the assignee, plaintiff, was decreed to be entitled to the stocks, and to a decree that the defendant vest in the plaintiff the title to the same, and pay the costs of suit. (*Hyde, Ass., v. Cohen et al.*, 11 N. B. R. 461; Fed. Cas. 6967.) It has been held that a voluntary deed is not fraudulent merely because there is some indebtedness existing, but is void as to existing creditors

only when made by a person in such embarrassed circumstances as not to leave ample margin in favor of existing creditors. (Smith v. Kehr, 7 N. B. R. 97; 2 Dill 50; 6 West. Jur. 451; Fed. Cas. 13071.)

The date of the execution and delivery of a deed, and not the date named therein, is the time from which to reckon the four months within which a petition in bankruptcy is to be filed, where the deed is intended to defraud creditors. (In re Rooney, 6 N. B. R. 168; Fed. Cas. 12032.)

**Conveyances held valid.**—There is nothing in the bankrupt law which prevents an insolvent from dealing with his property prior to institution of bankruptcy proceedings against him, if such dealing is conducted without any purpose to delay or defraud his creditors or to give a preference, and the value of the estate is not impaired. (Clark, Ass., v. Ise-lin, 11 N. B. R. 387; 21 Wall. 860.) An insolvent debtor may sell or encumber his estate for a present and sufficient consideration, if the transaction be *bona fide*, and without fraud or an intention to defeat the operation of the Bankrupt Act (Gattman & Co. v. Honea, Ass., 13 N. B. R. 493; 7 Chi. Leg. News, 395; Fed. Cas. 5271); or he may sell property to raise money for the purpose of procuring means to defray his expenses in contemplated bankruptcy proceedings, provided he does not sell at a sacrifice, and that the sum so raised is reasonable in amount (In re Keefer, 4 N. B. R. 126; 3 Chi. Leg. News, 125; Fed. Cas. 7636); and a transfer that is the execution of a contract made before there were circumstances to impeach it as an intended fraud on the Bankrupt Act, and the debtor appeared solvent, will be protected, and a bill by the assignee in bankruptcy to recover property so conveyed will be dismissed (In re Wood, 5 N. B. R. 421; Fed. Cas. 17937); but a general promise, made at the time a debt is contracted, to give security if required, cannot be executed after the debtor has become insolvent (Lloyd, Ass., etc. v. Strob-ridge, 16 N. B. R. 197; 10 Chi. Leg. News, 1; 1 San Fran. Law J. 13; Fed. Cas. 8435); and the law will permit the grant or the conveyance to take effect upon property when it is brought into existence and comes to belong to the grantor, in fulfillment of an express agreement, if the agreement is founded on good and valuable consideration, unless it in-fringes some rule of law or will prejudice the rights of third persons. (Barnard et al., Ass., v. Norwich & Worcester R. R. Co. et al., 14 N. B. R. 469; 4 Cliff. 851; 5 Amer. Law Rec. 861; 3 Cent. Law J. 608; 22 Int. Rev. Rec. 312; Fed. Cas. 1007.)

Sales of property in good faith before insolvency, for a fair price, cannot be impeached for fraud (Sedgwick v. Wormser, 7 N. B. R. 186; Fed. Cas. 12636); so in a proceeding to vacate a composition, it was held that a sale of bankrupt's stock and fixtures, prior to bankruptcy, would not be set aside on ground of inadequacy of price (In re Shaw et al., 19 N. B. R. 512; Fed. Cas. 12716); and where A., being in advanced years, conveyed all his property to his daughters, they agreeing to pay all his debts and sup-port him, when his property exceeded in value all he owed, it was held

not in fraud of creditors (In re Cornwell, 6 N. B. R. 305; 6 Amer. Law Rev. 365; Fed. Cas. 3250); also a sale by a debtor, three months prior to being adjudged a bankrupt, of a portion of his property, made in good faith to raise money to discharge a debt, and where the vendee has neither knowledge nor reasonable cause to believe that the sale is made with fraudulent intent, is not in violation of the Bankrupt Act. (Tiffany v. Lucas, 8 N. B. R. 49; 15 Wall. 410.) A conveyance by an insolvent debtor to his creditor, of property upon which said creditor has a lien to a greater amount than the value thereof, is not void (Catlin v. Hoffman, 9 N. B. R. 342; 2 Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521); and where there is no fraudulent intention, a dealer may, although insolvent, continue to sell his stock at retail, and endeavor to effect, if possible, a compromise with his creditors. (In re Munger & Champlin, 4 N. B. R. 90; Fed. Cas. 9923.) Barring fraud in the transaction and an intent to defeat the act, there is nothing in the bankrupt law forbidding a loan of money to a man pecuniarily embarrassed, even though the lender had reason to believe the borrower insolvent. (Tiffany v. Boatman's Saving Institution, 9 N. B. R. 245; 18 Wall. 375.)

A debtor transferred his stock of goods to a creditor by bill of sale. Later other creditors attached the goods, and after the attachment the debtor became a voluntary bankrupt and the goods were transferred by proper proceedings to the assignee. The first transferee brought an action against the attaching creditors for unlawful seizure and conversion. It was held that he was entitled to recover the full value of the property. (Bromley v. Goodrich et al., 15 N. B. R. 289.) Although an assignment be not duly acknowledged or recorded, yet it is valid as against a party who takes title from the bankrupt, after the commencement of the proceedings in bankruptcy, with full notice thereof. (Brady v. Otis et al., 14 N. B. R. 345.) The fact that a bankrupt is adjudicated upon a petition charging him with making a fraudulent conveyance does not estop his grantee from claiming that as to him the conveyance is valid. (In re Marter, 12 N. B. R. 185; Fed. Cas. 9143.) The power to execute a deed in a mortgagor's name and as his attorney is not affected by his bankruptcy, although the sale, under the power contained in the mortgage, took place after the commencement of the proceedings in bankruptcy. (Hall v. Bliss et al., 14 N. B. R. 329.) A conveyance, even though fraudulent, is not made "in contemplation of bankruptcy or insolvency," where there are no other creditors and the debt is well secured. (In re Johann, 4 N. B. R. 143; 2 Biss. 139; Fed. Cas. 7331.) A check given by A., who becomes bankrupt before presentation, nevertheless entitles the payee to so much of the money of the bankrupt as the check calls for. (Fourth Nat. Bank of Chicago v. City Nat. Bank of Grand Rapids, 10 N. B. R. 44.)

**Evidence of fraudulent intent.**—In an action to set aside a conveyance by an insolvent debtor, on the ground of fraud, such fraud must be proved, not assumed. (Campbell, Ass. v. Waite et al., 16 N. B. R. 93; 9

Ben. 166; Fed. Cas. 2374.) If, after deducting the property which is the subject of the voluntary settlement, sufficient available assets are not left for the payment of the settlor's debts, then the law infers intent to defraud (*Sedgwick, Ass., v. Place et al.*, 5 N. B. R. 168; 5 Ben. 184; 3 Chi. Leg. News, 409; 4 Amer. Law T. Rep. (U. S. Cts.) 179; 6 Amer. Law Rev. 181; Fed. Cas. 12630); and a sale of property by a bankrupt out of the usual and ordinary course of business is presumptively fraudulent, but this presumption may be rebutted by evidence *aliunde* to be produced by the vendee. (*Babbitt v. Walbrun & Co.*, 4 N. B. R. 80; 2 Chi. Leg. News, 285; 1 Dill. 19; Fed. Cas. 694.) A sale was made of a stock in trade and so forth when the vendor was insolvent. Vendor was afterwards adjudicated bankrupt. The sale was attacked on the ground that it was made by an insolvent, and that the vendee had reasonable cause to believe him insolvent. The court held that the bill must allege that the defendant knew the fraud and such knowledge must be proved. (*Crump, Ass., v. Chapman*, 15 N. B. R. 571; 1 Hughes, 188; 1 Va. Law J. 309; 24 Pittsb. Leg. J. 169; Fed. Cas. 8455; secs. 5128, 5129, R. S.)

Conveyances not made in the usual and ordinary course of business of debtors are *prima facie* fraudulent and void (*Rison v. Knapp*, 4 N. B. R. 114; Fed. Cas. 11861; *Collins & Ferrington, Ass., v. Bell et al.*, 8 N. B. R. 146; Fed. Cas. 3010; *United States v. Bayer*, 13 N. B. R. 88; Fed. Cas. 14584; *In re Sims*, 19 N. B. R. 57; Fed. Cas. 12889; *Webb, Ass., v. Sachs et al.*, 15 N. B. R. 168; 4 Sawy. 158; 9 Chi. Leg. News, 156; Fed. Cas. 17825; *In re Deane & Garrett*, 2 N. B. R. 29; 15 Pittsb. Leg. J. 581; Fed. Cas. 8700; *Walburn et al. v. Babbitt, Ass.*, 2 N. B. R. 1; 16 Wall. 577; *In re Langley*, 1 N. B. R. 155); and in determining whether a given transaction is made in the ordinary and usual course of business of a party, the question is not whether such transactions are usual in the general conduct of business throughout the community, but whether they are according to the usual course of business of the particular person whose conveyance is the subject of investigation. (*Rison v. Knapp*, 4 N. B. R. 114; Fed. Cas. 11861.)

To defeat a conveyance for a present consideration, the proof must show that the party to whom or for whose benefit it was made knew or had reasonable cause to believe the grantor was insolvent and that a fraud upon the Bankrupt Act was intended. The knowledge of a fraud may be established by circumstantial evidence. (*Gattman & Co. v. Honea, Ass.*, 12 N. B. R. 493; 7 Chi. Leg. News, 395; Fed. Cas. 5271.) A voluntary conveyance, where there are no existing debts, may be void as to subsequent creditors if it be shown by facts and circumstances that the deed was made with an actual intent to defraud subsequent creditors. (*Smith v. Keher*, 7 N. B. R. 97; 2 Dill. 50; 6 West. Jur. 451; Fed. Cas. 13071; *Beecher, Ass., v. Clark et al.*, 10 N. B. R. 885; Fed. Cas. 1223.) An allegation that defendant, in contemplation of bankruptcy, consigned goods to a consignee residing beyond the jurisdiction of the

court, is a sufficient charge that the removal was to defraud creditors, if it was in fact done with intent to keep the property from coming into the hands of the assignee. (In re Hammond v. Coolidge, 8 N. B. R. 71; 1 Lowell, 381; Fed. Cas. 5999.)

**Notice to transferee.**—If a mortgagor conveys in fraud of the Bankrupt Act, actual notice must be brought home to the mortgagee who has taken the conveyance under circumstances promising material relief to the debtor and apparently for that purpose (Boothe, Ass., etc. v. Brooke, Neely & Co., 12 N. B. R. 398; 1 N. Y. Wkly. Dig. 125; Fed. Cas. 1650; Campbell, Ass., v. Waite et al., 16 N. B. R. 93; 9 Ben. 166; Fed. Cas. 2874); and it is a question of fact for the jury to decide whether or not, at the time a creditor took an assignment of property from the debtor, the creditor knew or had reason to know the debtor was insolvent. (Ecker v. McAllister, 17 N. B. R. 42.)

A creditor has reasonable cause to believe that his debtor is insolvent when such a state of facts is brought to his notice respecting the affairs and pecuniary condition of his debtor as would lead a prudent man to the conclusion that the debtor is unable to meet his obligations as they mature, in the ordinary course of his business (Dutcher v. Wright, Ass., etc., 16 N. B. R. 331; 94 U. S. 553); and the filing of the petition praying the adjudication in bankruptcy is notice to all the world and all persons dealing with the person so charged do so at their peril. A purchaser of negotiable paper, after such filing, is not a *bona fide* holder without notice. (In re Lake, 6 N. B. R. 542; 6 West. Jur. 360; 4 Chi. Leg. News, 281; 3 Biss. 204; Fed. Cas. 7992.) To be a *bona fide* purchaser without notice, a person must be without notice of the rights and equities sought to be enforced at the time of payment of the consideration (Marsh and Palmer, Ex'r, v. Armstrong, 11 N. B. R. 125); and a mortgagee who knows that the mortgagor is unable to pay his debts, and that there are other creditors for amounts larger than his whose debts are unsecured, a mortgage executed to secure his debt within the time prescribed by the Bankrupt Act is made in fraud of that act, and such mortgage will be set aside (In re Armstrong, 16 N. B. R. 275; 9 Ben. 22; Fed. Cas. 539); but notice to a creditor of an act of bankruptcy does not affect a transfer to him, otherwise than as it tends to show that he had reason to believe that such transfer was made in fraud of the Bankrupt Act. (Catlin v. Hoffman, 9 N. B. R. 342; 2 Sawy. 486; 21 Pittsb. Leg. J. 159; Fed. Cas. 2521.) A second purchaser who had knowledge of the bankrupt's failure and that the seller held the goods under mortgage from the bankrupt does not get a good title. To constitute a *bona fide* purchaser for value, he must not only show that he had no notice, but he must have paid a consideration at the time of the transfer either in money or other property, or by a surrender of existing debts or securities. (Rison v. Knapp, 4 N. B. R. 114; Fed. Cas. 11861.)



f. That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

**Assignee's title and right of recovery.** See sec. 70.

**Sec. 68. Set-offs and counter-claims.**—*a.* In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

[Act of 1867. SEC. 20. . . . That, in all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or paid, but no set-off shall be allowed of a claim in its nature not provable against the estate: . . . When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agree-

ment between him and the assignee, or by a sale thereof, to be made in such a manner as the court shall direct; or the creditor may release or convey his claim to the assignee upon such property; and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.]

A debt is defined to include any debt, demand or claim provable in bankruptcy. (Sec. 1—11.)

**Mutual debts.**—"Mutual debts" and "mutual credits" are correlative terms. The term "mutual credits" in the act (1867) meant only such as must in their nature terminate in debts. What is a debt on one side is a credit on the other, so that "credits" can have no broader meaning than "debts," and cannot be extended so as to include trusts. (*Libby v. Hopkins*, 104 U. S. 303.)

To constitute mutual demands, within the meaning of the act, they should be due from the same persons in the same capacity. (*Rollins, Ass., v. Twitchell & Co.*, 14 N. B. R. 201; 2 Hask. 66; 5 Amer. Law Rec. 247; Fed. Cas. 12027; *In re Purcell*, 18 N. B. R. 447; Fed. Cas. 11470.)

**Set-off or counter-claim.**—Upon an attempted set-off of a debt due before bankruptcy and one not due till afterwards, both being due at the time of attempted set-off, it was held that these accounts could be set off against each other. (*In re City Bank, etc.*, 6 N. B. R. 71; 4 Chi. Leg. News, 81; 6 West. Jur. 65; Fed. Cas. 2742.)

Under the former act it was held that where the alleged bankrupt had a counter-claim against the petitioning creditor, being provable in bankruptcy, and such amount would reduce his claim below \$250, the petition would be dismissed. (*In re Osage Valley & S. Kan. R. R. Co.*, 9 N. B. R. 281; 1 Cent. Law J. 33; Fed. Cas. 10592.) In a composition in which no assignee had been appointed, bankrupt had claims against a creditor which he offered to set off against the debt. It was held that a bankrupt has the same rights as to set-off as an assignee, if one had been appointed. (*Ex parte Howard Nat. Bank*, 16 N. B. R. 420; 2 Lowell, 487; Fed. Cas. 6764.)

Where the assignee of an insolvent bank sues the maker of a promissory note held by the bank, and the maker, after the execution and recording of the deed of assignment to the assignee, and with knowl-

edge of the insolvency of the bank and of the assignment to the assignee, takes a transfer of a draft issued by the bank which has been protested for non-payment, he may set off the draft against the claim of the assignee on his note. (*Shryock and Rhodes, Assignees, v. Bashore*, 13 N. B. R. 481; *Fed. Cas. 12820*.)

**Stock liability.**—A stockholder who was indebted to an insolvent corporation for unpaid shares, which had been nominally paid, the money being immediately taken back as a loan, filed his bill to have set off against his indebtedness a debt due him by the corporation. It was held that such unpaid subscription was a trust fund and could not be set off (*Sawyer et al. v. Hoag et al.*, 9 N. B. R. 145; 17 Wall. 610); and where creditors of an insolvent corporation are stockholders they will not be permitted to deduct the amount of their claims from their proportions of the unpaid capital; yet deductions may be made, perhaps, from the assignee's demands, equal to their estimated dividends. (*Wilbur, Ass. v. Stockholders*, 18 N. B. R. 178; 18 Phila. 479; 85 Leg. Int. 846; 26 Pittsb. Leg. J. 15; *Fed. Cas. 17636*.)

**Bank deposits.**—A bankrupt who is liable to a bank for notes on some of which he is principal and others on which he is indorser may set off an amount on deposit to his credit, against his aggregate debt, not including any notes upon which he is surety, unless the principals are insolvent (*Ex parte Howard Nat. Bank*, 16 N. B. R. 420; 2 Lowell, 487; *Fed. Cas. 6764*; *City of Harrisburg v. Sherlock*, 16 N. B. R. 63); and a bank has the right, under the bankrupt law, to set off the amount of a protested draft against the deposit of an insolvent debtor (*In re Petrie et al.*, 7 N. B. R. 382; 5 Ben. 110; *Fed. Cas. 11040*); and also where securities are deposited with a bank to secure a particular note of one of its stockholders, who also owes it other notes, and the debtor becomes bankrupt, the bank can apply the securities to the other notes. (*In re Peebles*, 13 N. B. R. 149; 2 Hughes, 894; *Fed. Cas. 10902*.)

**Unliquidated damages.**—Unliquidated damages growing out of any contract, when assessed, are provable debts, and may be set up by way of defense to show that no demand is due to petitioner entitling it to have defendant declared a bankrupt. (*In re Osage Valley & S. Kan. R. R. Co.*, 9 N. B. R. 281; 1 Cent. Law J. 83; *Fed. Cas. 10592*.) A bankrupt employed convicts from a state under contract by the terms of which the state was to keep them under good discipline and at diligent labor. It was held that damage sustained by failure of the state to perform these stipulations should be deducted from contract price in estimating the amount due the state (*In re Southwestern Car Co.*, 19 N. B. R. 404; *Fed. Cas. 18192*); and also where the set-off is founded in a duty which the plaintiff owes the defendant, the wrongful act can be waived and a set-off is proper. (*McCabe, Ass. v. Winship*, 17 N. B. R. 118; *Fed. Cas. 8668*.)

**Collateral.**—A person holding stock of the bankrupt as collateral for a debt overdue at the commencement of proceedings may, if he has

power to sell the stock, retain the surplus by way of setting off on another claim which he holds against the bankrupt; and a promise to return collateral upon payment of a debt does not bar a set-off, unless the property has been intrusted to the agent for a particular purpose inconsistent with such application of the surplus, so that this would be a breach of trust; and also a creditor who, at the time of the bankruptcy, has in his hands goods or chattels of the bankrupt, with a power of sale, or choses in action with a power of collection, may sell the goods or collect the claims and set them off against the debt the bankrupt owes him. (*Ex parte Whiting*, *In re Dow et al.*, 14 N. B. R. 807; 2 *Lowell*, 472; *Fed. Cas.* 17573.)

**Personal service.**—Assignee brought action to foreclose a mortgage given by K. to bankrupts. K. pleaded as a set-off amount due him from bankrupt for personal services. It was held that K. could set off any demand in his favor which is the subject of set-off (*Von Sachs, Ass., etc. v. Kretz et al.*, 19 N. B. R. 63); and where an employee was in the habit of receiving and paying out money for his employer, the employee may set off such money as is in his hands at the time of the bankruptcy of his employer against his salary due. (*Ex parte Pollard*, 17 N. B. R. 228; 2 *Lowell*, 411; *Fed. Cas.* 11252.) An assignee under a general assignment is entitled to set off the amount allowed him for his services against the claim of the assignee in bankruptcy, although his claim therefor was rejected in proceedings before the register. (*In re Catlin, Ass., v. Foster*, 3 N. B. R. 134; 1 *Sawy.* 37; 3 *Amer. Law T.* 134; 1 *Amer. Law T. Rep. Bankr.* 192; *Fed. Cas.* 2519.)

**Preferences.**—Where a creditor, a bank, collects money due the bankrupt and gives the same to the sheriff, who applies it on the bank's judgment, the case of set-off does not arise, but it is a fraudulent preference, and the money can be recovered. (*Traders' Nat. Bank v. Campbell*, 6 N. B. R. 353; 14 *Wall.* 87.) A debtor delivered goods to the workmen of one of his creditors, upon the creditor's credit, with the understanding that they would be paid for. The creditor applied the goods to the payment of a debt due from the debtor. It was held that there was no preference. (*Rice et al. v. Grafton Mills*, 13 N. B. R. 209.)

**Neglect to prove.**—In making proof of claim, a creditor did not show that the bankrupt held an unsatisfied claim against him. Assignee brought suit on the claim, and he pleaded the amount allowed on his proof as a set-off. It was held that he was not entitled to such set-off (*Russell, Ass., etc. v. Owen*, 15 N. B. R. 322); and a creditor who receives a composition from his debtor, with full knowledge of the facts, is not entitled to have a set-off enforced which he neglected to assert when the composition was made. (*Hunt v. Holmes*, 16 N. B. R. 101; *Fed. Cas.* 6890.) A debtor who accepts a transfer of a note of the bankrupt, without any stipulation as to the terms of the transfer, cannot set it off against his own debt to the bankrupt. (*In re Lane*, 13 N. B. R. 43; 2 *Lowell*, 305; 1 *N. Y. Wkly. Dig.* 296; *Fed. Cas.* 8043.)

**Feme covert.**—A wife received sums of money which she deposited with her husband for safe-keeping, a portion of which she subsequently withdrew. It was held that she was entitled to prove claim as a general creditor of her husband in bankruptcy proceedings, and the same could not be offset by previous reasonable gifts, nor of an insurance policy on the husband's life for the benefit of the wife and their children (In re Bigelow et al., 2 N. B. R. 170; 2 Ben. 198; 2 Amer. Law T. Rep. Bankr. 87; Fed. Cas. 1898); and a debt contracted during coverture by a *feme covert*, who, though actually engaged in trade, has not complied with the requirements of the statutes, is available by her to defeat a debt which was the basis of involuntary bankruptcy proceedings. (In re Slichter, 2 N. B. R. 107; Fed. Cas. 12943.)

b. A set-off or counter-claim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

[Act of 1867. Sec. 20. . . . That no set-off shall be allowed in favor of any debtor to the bankrupt of a claim purchased by or transferred to him after the filing of the petition.]

Creditors cannot purchase worthless claims or such as are worth but a percentage of their face value and use them as a set-off or counter-claim to pay off the amounts due the bankrupt's estate. To make a set-off or counter-claim valid, it must be provable against the estate or must have been purchased by or transferred to the creditor four months or more prior to the filing of the petition. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estate, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which otherwise would be recovered from him. (Sec. 60, c.)

**Not allowed when not provable claim.**—Where a note is subject to set-off for an amount greater than the amount of the note, it is not a provable debt (In re Ford et al., 18 N. B. R. 426; Fed. Cas. 4982); nor can a joint claim, a debt due to several joint creditors, be set off against a debt due by one of them to the bankrupt. (Gray v. Rolle, 9 N. B. R. 337; 18 Wall. 629.) A chose in action is not negotiable, and does not become a mutual debt or credit in the hands of the assignee of such debt or

credit so as to be a matter of set-off. (*Rollins, Ass., v. Twitchell & Co.*, 14 N. B. R. 201; 2 Hask. 66; 5 Amer. Law Rec. 247; Fed. Cas. 12027.)

**Corporations.**—A stockholder who is also a policy-holder of a bankrupt insurance company cannot set off a claim for loss by fire against his unpaid stock subscription; neither can the treasurer of such company set off a claim for loss against an amount due the company as treasurer (*Scammon v. Kimball*, 8 N. B. R. 337; 18 Int. Rev. Rec. 118; 4 Chi. Leg. News, 284; Fed. Cas. 12435; also 13 N. B. R. 445; 92 U. S. 362); but where the holder of policies of insurance in a bankrupt company had money of the company deposited with him, it was held that he could set off the amount due on the policies against the claim for the deposits. (*Scammon v. Kimball, Ass.*, 13 N. B. R. 445; 92 U. S. 362.) A banking society for ten years had not conducted its business as a bank, but for seven years had pursued a policy of liquidation by set-off. The deposits became a commodity like stocks, and were not paid, but simply represented by checks, which were good as set-offs in favor of debtors of the society. It was held that as these papers did not represent money, were not payable at sight, and limited in negotiability, they were evidences of assignment of choses in action; and that parties selling these papers were not responsible to an assignee of the society for the face value of the papers (*Harmanson, Ass., v. Bain et al.*, 15 N. B. R. 173; 1 Hughes, 188; Fed. Cas. 6072); also the assignee of an insolvent bank cannot accept in payment of debts due the bank a protested draft drawn by such bank upon another bank and sold to the debtor. (*Bashore et al. v. Rhoads et al.*, 16 N. B. R. 72.)

A creditor of a bankrupt who, with knowledge of the circumstances, enters into a new agreement by which he is to act as the agent of the bankrupt in the sale of his goods, treating the same as a special account and turning over the cash received therefor, cannot set off his old debt against an amount due from him on the new account. (*In re Troy Woolen Co.*, 8 N. B. R. 412; Fed. Cas. 14203.)

**Not allowed when purchased in view of bankruptcy.**—The act of 1867 differed from the present in forbidding the allowance of a counterclaim only in case of claims purchased by or transferred to a debtor after the filing of the petition.

A debtor to a bankrupt's estate will not be aided by a court to set off notes of the bankrupt, bought on a speculation of the probable dividends against his debt to the estate. (*Hunt v. Holmes et al.*, 16 N. B. R. 101; Fed. Cas. 6890.) A claim against the bankrupt cannot be set off against an indebtedness for goods purchased from the assignee; but a claim against the bankrupt's estate may be set off against an indebtedness for goods purchased from the assignee. (*Moran et al. v. Bogert*, 14 N. B. R. 393.) An assignee of a bankrupt who has a large deposit with a bank, which bought up claims against the bankrupt's estate to set off against such deposit, who has knowledge of all the facts and does not disclose them, nor dispute such claims for set-off, does not perform his duty and should be removed. (*In re Perkins*, 8 N. B. R. 56; 5 Biss. 254; Fed. Cas. 10982.)

**Sec. 69. Possession of property.—a.** A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

[Act of 1867. SEC. 25. . . . That when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of.

SEC. 40. . . . If it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district . . . and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court. . . .]

Whenever a petition is filed for the purpose of having a person adjudged a bankrupt, and at the same time an application is made to take charge of and hold the property, the petitioner must give a bond with at least two good and sufficient sureties who shall reside within the ju-

risdiction of the court, conditioned to indemnify the bankrupt for all costs and expenses, in addition to the damages occasioned, in the event the petition is dismissed. (Sec. 3, *e*.) As to whether a corporation can become a surety on the bond required by section 8, *e*, in view of the express provision permitting them to do so on the bonds of referees and trustees (sec. 50, *g*), is doubtful, but it would seem discretionary with the judge whether or not he will accept them under section 69.

A receiver may be appointed, after an adjudication of bankruptcy and before the selection of an assignee, for the temporary care and custody of the estate, when special circumstances render it desirable. (*Lansing v. Manton*, 14 N. B. R. 127; 3 N. Y. Weekly Dig. 112; Fed. Cas. 8077.) Application for a provisional assignee on the ground that the debtor was removing his property was denied, it appearing that the property was being removed in view of a contract made long before the commencement of the bankruptcy proceedings. (*M. & M. Nat. Bank of Pittsburg v. Brady's Bend Iron Co.*, 5 N. B. R. 491; 19 Pittsb. Leg. J. 5; 3 Chi. Leg. News, 402; 28 Leg. Int. 317; 4 Amer. Law T. 168; 8 Phila. 171; 3 Pittsb. Rep. 326; 1 Amer. Law T. Rep. Bankr. 272; Fed. Cas. 9018.) A warrant commanding the marshal to take possession provisionally of all the goods, assets and property conveyed by the bankrupt to another is beyond the power of the court in so far as it commands the marshal to take property conveyed before the filing of a petition by the bankrupt. (*In re Harthill*, 4 N. B. R. 131; 4 Ben. 488; Fed. Cas. 6161.) A petition in involuntary bankruptcy having been filed, and certain goods which had been transferred having been seized upon a warrant, a petition was filed for the annulment of the warrant, which was granted; but an injunction was issued to prevent disposal of the goods. (*In re Holland, Jr.*, 12 N. B. R. 403; 1 N. Y. Weekly Dig. 125; Fed. Cas. 6605.)

**Liability for unlawful seizure.**—It was held, under the act of 1867, that where property is unlawfully taken by the marshal under a warrant of seizure, the actual value of the property may be recovered. (*Doll v. Harlow*, 11 N. B. R. 350.) If the United States marshal, in executing a warrant for the seizure of a bankrupt's property, seize that of a stranger, he renders himself liable to an action for trespass which may be brought in a state court. (*Marsh and Palmer, Ex'rs, v. Armstrong*, 11 N. B. R. 125; *In re Muller & Bretano*, 3 N. B. R. 86; *Deady*, 513; Fed. Cas. 9912; *In re Marks*, 2 N. B. R. 175; Fed. Cas. 9095. But see *Stevenson et al. v. McLaren et al.*, 14 N. B. R. 403; *In re Briggs*, 3 N. B. R. 157; Fed. Cas. 1369.) A marshal has no authority under a warrant to seize property provisionally, outside of his district. (*Carr v. Phillips*, 18 N. B. R. 527; sec. 5046, R. S.)

**Sec. 70. Title to property.**—*a*. The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon



his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interest in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts, or from the unlawful taking or detention of, or injury to, his property.

[Act of 1867. Sec. 14. . . . That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings: . . . and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patents

and patent rights and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention, or of injury to the property of the bankrupt, and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dispose of, sue for, and recover or defend the same, as the bankrupt might or could have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate debts and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been presented or defended by such bankrupt. . . . No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; . . . but no property held by the bankrupt in trust shall pass by such assignment].

This is a substantial deviation from the act of 1867. Under that act the courts held the title to vest in the assignee as of the date of filing the petition, while under the present law it is limited to the date a party is adjudged a bankrupt, thus avoiding much of the difficulty and inconvenience incident to a transfer of title to be subsequently avoided upon a judgment of solvency, and permits business transactions with the bankrupt without fear as to imperfections of title. Should this liberality conduce to improvident treatment of the estate by the bankrupt, the court, upon satisfactory proof that the property is being neglected, is deteriorating or about to deteriorate in value, may issue a warrant to the marshal to seize and hold it subject to further orders, upon the giving of a satisfactory bond by the creditor. Upon the bankrupt giving a bond, the property may be released to him. (Sec. 69.) Furthermore, the practicing of fraud by the bankrupt will defeat his discharge, and his concealing any of the property belonging to the estate in bankruptcy, or making a false oath or account in relation to any proceedings, subjects him to imprisonment. (Sec. 29, b, 1, 2.) In addition, any attempt on the part of the alleged bankrupt to defeat the provisions of the law by conveying or delivering to others any material amount of property after the filing of the petition and before the adjudication renders the person receiving such property liable to imprisonment. (Sec. 29, b.)

**Control of court over property of bankrupt.**—A bankrupt before bankruptcy, or his assignee thereafter, is a necessary party to a suit in equity on an order on funds obtained before bankruptcy, and the bankruptcy court has exclusive jurisdiction for the determination of all questions pertaining to the bankrupt's estate (Walker, Ass., v. Seigel & Bott et al., 12 N. B. R. 894; 2 Cent. Law J. 508; Fed. Cas. 17085; In re Carow, 4 N. B. R. 178; Fed. Cas. 2426); and its jurisdiction operates as a *supersedes* of the process in the hands of the sheriff, and an injunction against all other proceedings than such as might thereupon be had under the authority of the court, until the question of bankruptcy shall have been disposed of. (Jones v. Leach, 1 N. B. R. 165; Fed. Cas. 7475.) All property of the bankrupt included in the schedule comes into the exclusive control of the court as fully as if it were actually and visibly in its presence, the moment the voluntary petition is filed (Byrd, Ass., v. Harrold et al., 18 N. B. R. 433; 26 Pittsb. Leg. J. 815; Fed. Cas. 2269); and no steps can thereafter be taken to enforce claims against the property except through the bankrupt court, or by its permission in the state court (In re Hufnagel, 12 N. B. R. 554; Fed. Cas. 6887; Davis v. Anderson, 6 N. B. R. 146; Fed. Cas. 3633); and the officer appointed to manage it is accountable to the court appointing him and to that court alone. (In re Carow, 4 N. B. R. 178; Fed. Cas. 2426.) The property of the bankrupt, though situate in another state and though mortgaged by the bankrupt prior to the institution of proceedings in bankruptcy against him, is under the control of the court. (Markson & Spalding v. Heaney, 4 N. B. R. 165; 8 Chi. Leg. News, 153; Fed. Cas. 9098.) Receivers of a company "dissolved" under state insolvency laws have no power to withhold the assets of the bankrupt company from the jurisdiction of the court of bankruptcy. (In re Independent Ins. Co., 6 N. B. R. 260; Holmes, 108; Fed. Cas. 7017.) A bankruptcy court has power to take possession of personal assets in the hands of a vendee of a bankrupt, purchased before the adjudication in bankruptcy, upon the *ex parte* allegations and proof by the assignee that such sale is fraudulent and void, anterior to a trial upon an issue of title thereto. (In re Hunt, 2 N. B. R. 166; 1 Chi. Leg. News, 169; Fed. Cas. 6881.)

**Property of bankrupt surrendered to register.**—Bankrupts upon filing their petition and being adjudicated bankrupts must surrender all the assets to the register, notwithstanding there may be a prospect of settlement with their creditors. (In re Shafer et al., 2 N. B. R. 178; 1 Chi. Leg. News, 826; Fed. Cas. 12694; In re Howes & Macy, 9 N. B. R. 423; 7 Ben. 102; Fed. Cas. 6787.) The register may order the bankrupt to hand over to the custodian of the estate funds in his hands, and failure to obey is contempt for which an attachment may issue. (In re Speyer, 6 N. B. R. 255; 42 How. Pr. 397; Fed. Cas. 18239.) The register has the right to convey the estate of the bankrupt to the assignee if there be no one before him contesting the appointment of an assignee, although title to the property is in dispute. (In re Wylie, 2 N. B. R. 58; Bank Ct. Rep. 123; 1 Chi. Leg. News, 80; Fed. Cas. 18109.)

**Nature of title of assignee.**—If the assignee has any power over a subject, it must be found in the bankrupt law itself. (*Dutcher, Ass., v. Bank*, 11 N. B. R. 457; 12 *Blatchf.* 435; *Fed. Cas.* 4203.) The title to property remains in the bankrupt until the trustee or assignee is duly appointed and qualified and the conveyance or assignment has been made to him. (*Sutherland v. Davis*, 10 N. B. R. 424.) All the rights and all the duties of the bankrupt in respect to whatever property, not excluded from the operation of the Bankruptcy Act, he may hold under whatever title, whether legal or equitable, and however incumbered, pass to and devolve upon the assignee at the date of the filing of the petition in bankruptcy (*In re Wynne*, 4 N. B. R. 5; 2 *Amer. Law T. Rep. Bankr.* 116; *Fed. Cas.* 18117; *In re Rosenberg*, 3 N. B. R. 33; 3 *Ben.* 366; *Fed. Cas.* 12055; *Smith v. Buchanan et al.*, 4 N. B. R. 133; 3 *Alb. Law J.* 97; *Fed. Cas.* 13016; *Markson & Spalding v. Heaney*, 4 N. B. R. 165; 1 *Dill.* 497; 3 *Chi. Leg. News*, 153; *Fed. Cas.* 9098; *Purviance v. Bank*, 8 N. B. R. 447; 30 *Leg. Int.* 352; 21 *Pittsb. Leg. J.* 33; *Fed. Cas.* 11475; *Fourth Nat. Bank of Chicago v. Bank*, 10 N. B. R. 44; *Randolph & Co. v. Canby, Ass.*, 11 N. B. R. 296; *Fed. Cas.* 11559; *Barnard et al., Ass., v. Railroad Co. et al.*, 14 N. B. R. 469; 4 *Cliff.* 351; 3 *Cent. Law J.* 608; 5 *Amer. Law Rec.* 361; 22 *Int. Rev. Rec.* 312; *Fed. Cas.* 1007; *Aiken v. Edrington et al.*, 15 N. B. R. 271; *Fed. Cas.* 111; *Hayes v. Dickinson*, 15 N. B. R. 350; *Hersey v. Elliott*, 18 N. B. R. 353), and he must be considered in the light of a purchaser. (*In re Griffith*, 3 N. B. R. 179; *Potter v. Cogswell*, 4 N. B. R. 9; *Bromley, Ass., v. Smith et al.*, 5 N. B. R. 152; 2 *Biss.* 511; 3 *Chi. Leg. News*, 297; *Fed. Cas.* 1922.) The effect of the petition, the adjudication and the assignment is to vest the assets in the assignee as a trust against which the statute of limitations ceases to run. (*In re Eldridge & Co.*, 12 N. B. R. 540; 2 *Hughes*, 256; 1 *N. Y. Wkly. Dig.* 243; *Fed. Cas.* 4331; *Starkweather v. Cleveland Ins. Co.*, 4 N. B. R. 110; 3 *Chi. Leg. News*, 77; 28 *Leg. Int.* 36; 10 *Amer. Law Reg. (N. S.)* 333; 5 *Amer. Law Rev.* 568; *Fed. Cas.* 13308.) He has all the rights and powers which are given to the whole body of creditors, whether at law or in equity (*Wilkins v. Davis*, 15 N. B. R. 60; 2 *Lowell*, 511; *Fed. Cas.* 17664), and he has the same remedies they would have had, to reach and subject it to the payment of the debts of the estate. (*Allen & Co. v. Montgomery et al.*, 10 N. B. R. 503.) There is not vested in the assignee any more beneficial interest in the debtor's estate than his execution creditors, under the laws of the respective states already in force, could have obtained under adversary proceedings. (*In re Appold*, 1 N. B. R. 178; 7 *Amer. Law Reg. (N. S.)* 624; 6 *Phila.* 469; 25 *Leg. Int.* 180; 1 *Amer. Law T. Rep. Bankr.* 83; *Fed. Cas.* 499.) He can claim only such interest and right in any property, except in case of fraud, as the bankrupt himself could have claimed. (*Rodgers v. Winsor*, 6 N. B. R. 246; *Fed. Cas.* 12023; *In re Dow*, 6 N. B. R. 10; *Fed. Cas.* 4036.) All money and property in the hands of the bankrupt at the time of filing his petition, which he is using and holding as his own, pass

to the assignee, and he cannot set up, in defense to the claim of the assignee, title in a third person, merely to hold it himself. (*In re Moses*, 19 N. B. R. 412; Fed. Cas. 9870.) Where the assignee has received money from the bankrupt, it is subject to every equity to which it was subject in the bankrupt's hands; but where he has recovered it in spite of the bankrupt's efforts to part with it, it will be free for distribution among the creditors generally. (*White v. Jones*, 6 N. B. R. 175; Fed. Cas. 17550.) When a discharged bankrupt enters into a written agreement with his creditors as to the disposal of his property among them, as the culmination of a suit brought after the adjudication, the agreement is not binding upon the estate without the assignee's signature. (*In re Anderson*, 9 N. B. R. 860; 2 Hughes, 378; Fed. Cas. 351.)

**Rights of assignee over attached property, etc.**—Where personal property of a bankrupt has been attached, the assignee in bankruptcy can take advantage of any remedy which would have been open to a subsequent attaching creditor, since he represents the creditors of the bankrupt as well as the bankrupt himself. (*Beers v. Place et al.*, 4 N. B. R. 150; 36 Coun. 578; 4 Amer. Law T. 186; 1 Amer. Law T. Rep. Bankr. 262; Fed. Cas. 1233.) The general or ultimate property in goods levied on by attachment being in the debtor (*In re Hull*, 18 N. B. R. 1; 14 Blatchf. 257; Fed. Cas. 6857), the net proceeds of the sale of the property of a bankrupt on a legal process suffered by him will be ordered to be paid by the sheriff to the assignee, when it appears that the creditor had reasonable cause to believe the debtor insolvent. (*In re Black et al.*, 1 N. B. R. 81; 2 Ben. 196; 1 Amer. Law T. Rep. Bankr. 39; Fed. Cas. 1457.) He is entitled to the surplus proceeds of a sheriff's sale of the bankrupt's real estate, as against a judgment creditor who has waived his lien and proved his claim. (*Wallace v. Conrad*, 3 N. B. R. 10.) Where, more than four months prior to bankruptcy proceedings, a sheriff having writs of attachment against the bankrupt takes receipts for property without taking possession, and the assignee finds the property in the bankrupt's possession and takes it, the sheriff's proceedings create no lien upon the property as against the assignee. (*In re Ashley*, 19 N. B. R. 237; Fed. Cas. 581.) Where a sheriff sells perishable goods under attachment by order of a state court, but without notice of the adjudication of the defendant in bankruptcy, he is guilty of a conversion of the goods and is liable for the market value thereof (*Long, Ass. v. Conner*, 17 N. B. R. 540; Fed. Cas. 8479); but where he delivers property which he holds under an execution levy to the marshal, who delivers it to the assignee, an action for wrongful taking and conversion will not lie against the latter. (*Ansonia Brass & Copper Co. v. Pratt, Ass., etc.*, 16 N. B. R. 170.) Creditors to whom a sheriff, having taken such property into his possession under process of replevin from a state court, has delivered the same, will be required to deliver it or pay the value thereof, if sold, to the assignee. (*In re Vogel*, 2 N. B. R. 138; 1 Chi. Leg. News, 210; Fed.

**Cas. 16983.)** Until a receiver is appointed in a creditor's action, the lien is not so far fixed as to authorize it to be upheld upon the debtor's chattels subject to levy on execution against the assignee in bankruptcy. (*Johnson, Ass., v. Rogers et al.*, 15 N. B. R. 1; 5 Amer. Law Rec. 536; 14 Alb. Law J. 427; Fed. Cas. 7408.)

After a voluntary general assignment the bankrupt has no leviable interest, since, though it is not good as against creditors, it is good against the bankrupt. (*In re Croughwell*, 17 N. B. R. 337; 9 Ben. 860; Fed. Cas. 3440.) Where a general assignment is made by a debtor for the benefit of his creditors, and subsequently creditors recover judgments and levy on the property in the hands of the assignee and it is sold, the creditors may not assail it, as the title passes to the assignee by the general assignment. (*In re Biesenthal et al.*, 15 N. B. R. 228.)

All the property of the bankrupt is vested in the assignee, including property attached on mesne process, made within four months next preceding the commencement of proceedings. (*Reed v. Bullington*, 11 N. B. R. 408; *Morris v. Davidson*, 11 N. B. R. 454.) If no attachment has been made within four months before commencement of proceedings in bankruptcy, and if there has been no conveyance in fraud of creditors, the title of the assignee is the same as that of the bankrupt. (*Donaldson, Ass., v. Farwell et al.*, 15 N. B. R. 277.) The vacation of an attachment by proceedings in bankruptcy does not enlarge the lien of judgment creditors under subsequent executions, but such vacation operates to vest the property in the assignee free from incumbrance to the extent of the attachment, and subject to the liens of the judgment creditors as to the excess. (*In re Nelson*, 16 N. B. R. 312; 9 Ben. 238; Fed. Cas. 10100.) An attachment under proceedings in the state court is dissolved from the date of the commencement of the bankruptcy proceedings. (*In re Preston*, 6 N. B. R. 545; Fed. Cas. 11394.) When, under the state law, a creditor acquires a lien on the property of a debtor upon docketing a judgment, if the docket be incomplete and ambiguous, no lien arises in favor of the judgment creditor as against the assignee. (*In re Boyd*, 16 N. B. R. 137; 4 Sawy. 262; 9 Chi. Leg. News, 385; 10 Chi. Leg. News, 1; 4 Law & Eq. Rep. 488; 6 Amer. Law Rec. 311; Fed. Cas. 1746.) A judgment given in a state court against the property of a bankrupt subsequent to the filing of his petition is void (*Stuart v. Hines*, 6 N. B. R. 416); and funds in the hands of the assignee are not subject to garnishment. (*In re Cunningham*, 19 N. B. R. 276; 20 Alb. Law T. 257; Fed. Cas. 3478.) A judgment creditor who has made a levy on property of a bankrupt attached for its full value, subject to such attachment, is not entitled to priority as against the assignee. (*In re Steele et al.*, 16 N. B. R. 105; 7 Biss. 504; Fed. Cas. 13345.) Where goods levied on are allowed to be sold by the assignee, and the lien is transferred to the fund, the creditor should first exhaust securities held by him for his debts. (*In re Sauthoff & Olson*, 14 N. B. R. 364; 7 Biss. 167; 5 Amer. Law Rec. 173; 8 Chi. Leg. News, 370; 3 Cent. Law J. 544; 3 N. Y. Wkly. Dig. 96; Fed. Cas. 12379.)

Property in the hands of an assignee that may be payable to any creditor is not subject to attachment by such creditor. (*Jackson v. Miller*, 9 N. B. R. 143.)

The amount collected by a foreign creditor under his execution levied after the adjudication in bankruptcy must be accounted for to the assignee, and proof be made and dividend taken upon the original debt without regard to the subsequent judgment thereon. (*In re Bugbee*, 9 N. B. R. 258; *Fed. Cas.* 2115.) A lien obtained by a creditor for a debt not yet payable is invalid against the assignee. (*Partridge v. Dearborn et al.*, 9 N. B. R. 474; 2 *Lowell*, 286; *Fed. Cas.* 10785.)

**Rights withheld from assignee in cases of attachments.**—The Bankrupt Act does not confer on the assignee the rights of a judgment creditor. (*Cook v. Waters et al.*, 9 N. B. R. 155.) A creditor who obtains payment of his debt under a judgment, through the passive non-resistance of the debtor, is not liable to repay the money to the assignee. (*Henkelman, Jackson & Phelps v. Smith, Ass.*, 13 N. B. R. 121.) Where creditors' bills are filed and a receiver appointed, who obtains possession of the property of the debtor, the assignee has no right to the property as against such judgment creditors. (*Sedgwick, Ass. v. Minck et al.*, 1 N. B. R. 214; 6 *Blatohf*, 156; *Fed. Cas.* 12616.) Where the execution is a lien upon all the personal property of the defendant from the time it reaches the sheriff's hands, the right of an execution creditor, upon an execution issued before the commencement of proceedings in bankruptcy, is paramount to the assignee, and will control the fund as against general creditors. (*Wilson v. Childs*, 8 N. B. R. 527; *Fed. Cas.* 17796.) Where property upon which there is an attachment lien is delivered to a receptor, the lien follows the property into the hands of the debtor's assignee. (*Rowe v. Page*, 13 N. B. R. 866.) An assignee in bankruptcy, who gets possession of goods subsequent to the delivery to the sheriff of an execution, holds the goods subject to the lien of the execution, even where there has been no actual levy by the sheriff. (*In re Paine*, 17 N. B. R. 87; 9 *Ben.* 144; *Fed. Cas.* 10673.) Where a debtor makes a general assignment, subsequent to which one creditor obtains judgment and levies on the goods in the hands of the general assignee, and the debtor is then adjudicated a bankrupt, the claim of the execution creditor takes precedence over the claim of the assignee in bankruptcy. (*McDonald, Ass. v. Moore et al.*, 15 N. B. R. 26; 8 *Ben.* 579; 1 *Abb. N. C.* 58; 23 *Int. Rev. Rec.* 25; 8 *N. Y. Weekly Dig.* 461; 24 *Pittsb. Leg. J.* 83; *Fed. Cas.* 8763.) Upon the dissolution of an attachment by the commencement of proceedings in bankruptcy, title to the property attached vests in the assignee, subject to the lien of the sheriff therein for his fee, if it accrue prior to the filing of the petition. (*In re Houseberger*, 2 N. B. R. 33; 2 *Ben.* 504; *Fed. Cas.* 6734.) Where a surplus fund remains in the hands of the state court that is claimed by judgment liens antedating the commencement of proceedings in bankruptcy, the good faith or validity of which are proven, the fund will be distributed to the claimants, and not

turned over to the assignee. (Biddle's Appeal, 9 N. B. R. 144.) The United States district court has no authority to order property to be taken out of the hands of the sheriff, who holds by virtue of an execution issued upon a judgment obtained in a state court, and the lien under the execution is *prima facie* valid; and until the writ is set aside for fraud or violation of the bankrupt law, the assignee cannot have possession before satisfaction of such judgment. (In re Shuey, 9 N. B. R. 526; 6 Chi. Leg. News, 248; Fed. Cas. 12821.) A purchaser at a sheriff's sale, after proceedings commenced in bankruptcy, where the levy is made prior thereto, will acquire a good title, notwithstanding that the judgments under which the sale took place are afterwards declared void. (Zahn v. Fry et al., 9 N. B. R. 546; 10 Phila. 243; 31 Leg. Int. 197; 21 Pittsb. Leg. J. 155; Fed. Cas. 18198.)

**Assignee's relation to mortgages.**—The assignee in bankruptcy of a mortgagor stands in the position of a judgment creditor, the adjudication being equivalent to recovery of judgment and a levy. (Miller, Ass., v. Jones, 15 N. B. R. 150; Fed. Cas. 9576.) The proceeds of the sale of mortgaged property in the possession of a state court, not brought there by final process to enforce the mortgage lien, must be paid over to the assignee of the mortgagor, and the mortgagee must go into the bankrupt court and assert his lien there. (Morris v. Davidson, 11 N. B. R. 454.) A mortgagee must be content with proceeds realized from a foreclosure sale and cannot touch rents in the hands of the assignee. (Foster v. Estate of Rhodes, 10 N. B. R. 523; Fed. Cas. 4981.) He can claim no rights under a mortgage given to secure him as indorser, where he has paid nothing and is no longer liable, but he is liable to the assignee for moneys realized by him on the mortgage. (Sessions v. Johnson et al., Ass., 17 N. B. R. 65; 95 U. S. 347.) He may not by petition obtain an order that the assignee make sale of simply his right of redemption. (Ferguson v. Peckham, 6 N. B. R. 569; 29 Leg. Int. 285; 6 Alb. Law J. 291; Fed. Cas. 4741.) Where property is sold under a mortgage, for less than the amount thereof, to the mortgagee, who takes judgment for the deficiency, and the assignee redeems the property by paying the amount for which it has been bid in, with interest, the judgment for the deficiency is not a lien on the property. (Lloyd, Ass., v. Hoo Sue et al., 17 N. B. R. 170; 5 Sawy. 74; 1 San Fran. Law J. 392; Fed. Cas. 8132.) Where there is no leviable interest in a mortgagor's equity of redemption, and where a petition in bankruptcy has been filed before sale under the mortgage, an execution creditor has no lien on the surplus proceeds of sale left after satisfying the mortgage. (In re Wrisley et al., 17 N. B. R. 259; Fed. Cas. 18103.) Before the appointment of an assignee or trustee, proceedings for an injunction to protect bankrupt's property may be instituted by him or the petitioning creditor. After an assignee or trustee has been appointed, he is the only person who could institute such proceedings on behalf of the bankrupt's estate. Whenever the proceedings sought to be enjoined are prosecuted for the



purpose of enforcing a valid lien, and were instituted before the commencement of proceedings in bankruptcy, the courts, in granting or refusing an injunction, are governed by the same principles that regulate their actions in the liquidation of liens, and will only interfere when it clearly appears that such interference will benefit the creditors generally. (*Blake et al. v. F. Valentine Co.*, 89 Fed. Rep. 691.)

Where a debtor gives mortgages on his exempt property in which he waives all homestead and exemption rights and his right to a discharge in bankruptcy, the property being left by the assignee in the debtor's possession temporarily, and afterwards the mortgages are foreclosed and the property levied on, the assignee at no time actually having possession thereof, although it had been included in the schedule, the levy is a contempt of court and the waiver cannot be enforced until the property is allotted to the bankrupt. (*Byrd, Ass., v. Harrold et al.*, 18 N. B. R. 438; 26 Pittsb. Leg. J. 815; Fed. Cas. 2269.)

A second mortgagee is not entitled, the first mortgagee consenting, to take and hold possession of the mortgaged property to foreclose his mortgage, as against an assignee, nor to appropriate the rents and profits to the payment of his debt. (*Hutchings et al. v. Muzzy Iron Works*, 8 N. B. R. 458; 6 Chi. Leg. News, 27; Fed. Cas. 6952.)

Where money is deposited in a court to the credit of a person against whom a warrant for adjudication of bankruptcy has been issued, and the funds have thereby been lodged in court without prejudice to the rights of creditors or of a mortgagee, the legal intendment of such deposit would be that the rights of the assignee and of the mortgagee should be adjudicated according to the usage of the court. (*In re Masterson*, 4 N. B. R. 180; Fed. Cas. 9268.) A bankrupt who has collected money belonging to the estate will not be permitted to pay it for interest on mortgages, unless it appear that such payment is for the benefit of the estate. (*In re Ettinger*, 18 N. B. R. 223; Fed. Cas. 4543.) A sale of land after proceedings commenced in bankruptcy against the debtor, but prior to the appointment of the assignee under a deed of trust executed prior to the bankruptcy, is voidable, but not void. (*McGready v. Harris*, 9 N. B. R. 185.)

A chattel mortgage or bill of sale, void as against creditors under a state statute of frauds, conveys no title as against the assignee. (*Edmondson v. Hyde*, 7 N. B. R. 1; 2 Sawy. 205; 5 Amer. Law T. Rep. (U. S. Cts.) 880; Fed. Cas. 4285.) Where a mortgage of personal property is, under the laws of the state, ineffectual to pass after-acquired property, the assignee is entitled to such property as against the mortgagee. (*In re Eldridge*, 4 N. B. R. 162; 8 Chi. Leg. News, 177; Fed. Cas. 12610.)

**Rights in mortgages that do not pass to assignee.**—A bankrupt court does not acquire such exclusive jurisdiction over the bankrupt's property, from an adjudication in bankruptcy, as would prevent a decree of foreclosure on a bill filed before the adjudication. (*Jerome et al., Ass., v. McCarter*, 15 N. B. R. 546.) Where a mortgage is executed just prior

to the institution of bankruptcy proceedings, but in pursuance of a parol agreement of several months previous, it is valid as against the assignee. (*Burdick, Ass., etc. v. Jackson et al.*, 15 N. B. R. 318.) The filing of a bill for the sale of property free from incumbrances does not give the mortgagee a right to the rents thereafter collected. The assignee is entitled to the rents until the mortgagee claims them. The filing of a petition and notice thereof to the assignee is sufficient to entitle the mortgagee to rents thereafter accruing. (*In re Bennett*, 12 N. B. R. 257; 2 *Hughes*, 156; *Fed. Cas.* 1313.) Where a debtor is adjudged bankrupt, and incumbered property coming into the hands of the assignee is sold, but does not satisfy a mortgage, the mortgagee is entitled to the rents and profits only from the date of notice to the assignee of intent to enforce the right to them. (*In re Bennett*, 12 N. B. R. 257; 2 *Hughes*, 156; *Fed. Cas.* 1313.) When a receiver of the rents and profits of the real estate is appointed after the mortgagor files his petition in bankruptcy, but before adjudication, and a sale of the premises does not satisfy the mortgage debt, the mortgagee is entitled to the rents in reduction of the deficiency. (*Hayes v. Dickinson*, 15 N. B. R. 350.) A mortgagee of real estate, with condition broken before the institution of proceedings in bankruptcy, where the mortgage is valid as against the bankrupt law, is entitled to all the bark, wood and timber cut on the premises and crops unharvested, as against the assignee of the mortgagor. (*In re Bruce*, 16 N. B. R. 318; 9 *Ben.* 236; *Fed. Cas.* 2045.) An assignee cannot make up, out of the general funds of the estate, any difference between the net proceeds of the sale of the mortgaged property and the amount due to the mortgagee by virtue of the mortgage. (*In re Purcell & Robinson*, 2 N. B. R. 10; 2 *Ben.* 485; 36 *How. Pr.* 42; *Fed. Cas.* 11469.) The assignee takes the property of the bankrupt subject to all equities and liens as held by him, and a mortgage, which under a state law is valid as between the bankrupt and his grantees, although not recorded, is valid as between the bankrupt's trustee and them. (*Potter et al. v. Coggeshall*, 4 N. B. R. 19; *Fed. Cas.* 11322.) He cannot impeach the validity of a mortgage which is void as against creditors on account of the omission to record it as required by state laws. (*In re Collins*, 12 N. B. R. 379; 12 *Blatchf.* 548; 1 *N. Y. Wkly. Dig.* 78; *Fed. Cas.* 3007.) He simply succeeds to the rights the bankrupt had in property, and a suit may be maintained to correct a description in a mortgage given by the bankrupt. (*Schulze, Ass., v. Bolting*, 17 N. B. R. 167; 8 *Biss.* 174; *Fed. Cas.* 12489.) If a guardian transcend his power by making an agreement to discharge one mortgage and take a new one, such agreement is only voidable, and that only at the election of the ward on coming of age, and it is valid against the assignee of the mortgagor until so avoided. (*Burdick, Ass., v. Jackson et al.*, 15 N. B. R. 318.)

An unrecorded chattel mortgage, having been delivered to, and retained by, the mortgagee, is valid as against the mortgagor's assignee. (*In re Griffiths*, 3 N. B. R. 179.) A mortgage executed in good faith to

secure future sales of goods to the mortgagor is good as against the assignee to the extent of advances actually made. (Marvin, Ass., v. Chambers, 18 N. B. R. 77; 12 Blatchf. 495; 1 N. Y. Wkly. Dig. 865; Fed. Cas. 9179.) Where a mortgage made by a railroad corporation provides that it shall include all property subsequently acquired by the mortgagor, it will include a railroad with its appurtenances subsequently leased by the mortgagor, and the title thereto will be valid as against the assignee of the mortgagor. (Barnard et al., Ass., v. Norwich & Worcester R. R. Co. et al., 14 N. B. R. 469; 4 Cliff. 351; 3 Cent. Law J. 608; 5 Amer. Law Rec. 361; 23 Int. Rev. Rec. 812; Fed. Cas. 1007.) A chattel mortgage given for a present consideration, and good between the parties, is not rendered invalid as against the assignee by failure to file the same, or take possession of the property, until a month before the commencement of proceedings in bankruptcy, notwithstanding the mortgagee knew the mortgagor to be insolvent, and that the instrument gave him a preference. (In re Barman et al., 14 N. B. R. 125; 8 N. Y. Wkly. Dig. 111; Fed. Cas. 999.)

**The relation of assignee to trust property.**—The possession of assets in the use of a bankrupt, though by a defeasible title, makes a sufficient title for his assignee until it should be successfully disputed. (In re Beal, 2 N. B. R. 178; 1 Lowell, 828; 2 Amer. Law T. Rep. Bankr. 95; 1 Chi. Leg. News, 826; Fed. Cas. 1156.) Where money is placed in the hands of another to be invested by him in trust, and he fails to invest it, but uses it in his speculations and afterwards becomes bankrupt, so that the property does not remain in specie, the *cestuis que trust* must come in *pari passu* with the other creditors, and prove against the trustee's estate for the amount due them. (In re Faneway, 4 N. B. R. 26.) If a trustee deposit the trust funds in a bank with his own, in his own name, after his bankruptcy the mode of ascertaining how much belongs to the trust estate is to take the deposits and withdrawals in the order of their dates, find out how much of the balance belongs to the trust and how much to the general fund, and divide accordingly. (Ex parte Hobbs, In re Hapgood, 14 N. B. R. 495; 2 Lowell, 491; Fed. Cas. 6549.)

**Trusts that do not pass to the assignee.**—Property held in trust merely, by a bankrupt, does not pass to his assignee, but if his trust be coupled with an interest the assignee is vested with such interest. (Walker, Ass., v. Seigel & Bott et al., 12 N. B. R. 894; 2 Cent. Law J. 508; Fed. Cas. 17085.) If a deed of trust be actually delivered to the trustee, with power to record it when he deems proper, it is valid as against the assignee, although it is not recorded until after the grantor's failure. (National Bank of Fredericksburg v. Conway et al., 14 N. B. R. 518; 1 Hughes, 37; Fed. Cas. 10037.) Where a will gives a trustee an absolute discretion, which he is not obliged to exercise in favor of the bankrupt—the bankrupt has not such an interest as his assignee can establish. (Nichols, Ass., v. Eaton et al., 18 N. B. R. 421; 91 U. S. 716.) Where a creditor has received from his debtor money, under circumstances which are

entirely lawful, it is free from all trust and claim on behalf of the *cestui que trust*, unless it be shown that the creditor knew of the trust. (*White v. Jones*, 6 N. B. R. 175; 29 Leg. Int. 325; Fed. Cas. 17550.) Where suit is brought by a bankrupt against an express company for negligent loss of goods, the court will not charge the jury that the verdict, if for the plaintiff, be for the use of the trustee in bankruptcy. (*Southern Express Co. v. Connor*, 12 N. B. R. 53.) Where a sum is deposited in trust, the income of which is to be applied to the support of the *cestui que trust* and his wife, and for the maintenance and education of their children, the annuity and principal sum being declared to be inalienable by the grantees, and not subject to their debts or control, such income does not pass to the assignee in bankruptcy, nor can the court decree an aliquot part to the assignee. (*Durant, Ass., v. Insurance Co.*, 16 N. B. R. 324; Fed. Cas. 4188.)

**Fraudulent conveyances.**—A general assignment for the equal benefit of all creditors is void as against an assignee in bankruptcy, being at war with the policy of the bankrupt law. (*Globe Ins. Co. v. Cleveland Ins. Co.*, 14 N. B. R. 311; 8 Chi. Leg. News, 258; 4 Amer. Law Rec. 632; 13 Alb. Law J. 305; Fed. Cas. 5486.) Title to real estate will not pass under an assignment of "all the goods, chattels and effects and property of every kind, personal and mixed," of the assignor, for the benefit of his creditors. (*Rhoads v. Blatt*, 16 N. B. R. 32.) An assignee under a state law will be allowed the amount of his disbursements made before a general assignment in bankruptcy under the bankruptcy law. (*Macdonald, Ass., v. Moore et al.*, 15 N. B. R. 26; 8 Ben. 579; 1 Abb. N. C. 53; 23 Int. Rev. Rec. 25; 3 N. Y. Wkly. Dig. 461; 24 Pittsb. Leg. J. 83; Fed. Cas. 8763.) The title of an assignee in bankruptcy who was assignee under a deed of assignment relates back to the execution of the deed, and all his acts after he received the property and assets, not inconsistent with his title and duty as assignee in bankruptcy, will be ratified by the court. (*In re Walker*, 18 N. B. R. 56; Fed. Cas. 17063; *In re Biesenthal et al.*, 15 N. B. R. 228.)

Where a motion is made for attachment for contempt against one to whom there has been a general assignment of all the goods of a debtor for the benefit of his creditors, and an injunction has been issued to restrain him from disposing of the bankrupt's property, but he thereafter sells it, the motion will be dismissed, as it involves the determination of the assignee's title by summary proceedings. (*In re Marter*, 12 N. B. R. 185; Fed. Cas. 9143.) Where a fund is in the hands of an assignee in bankruptcy for distribution, to which assignees of the bankrupt under a general assignment and assignees under a special assignment prior to the general one both lay claim, and an equity suit is pending between the parties involving their rights to the fund, the bankrupt court will detain the fund until the rights of the parties are determined. (*In re Sabin*, 18 N. B. R. 157; 10 Chi. Leg. News, 364; 3 Cin. Law Bul. 625; Fed. Cas. 12195.) Where, six months prior to bankruptcy proceedings, the bankrupt makes

a voluntary assignment, and before the filing of the petition a receiver is appointed in proceedings supplementary to execution, a suit against the bankrupt, the assignee in bankruptcy, and the voluntary assignee, to set aside the voluntary assignment as void, properly joins them as defendants, and the property covered thereby is "property transferable to and vests in the assignee." (*Onley, etc. v. Tanner et al.*, 19 N. B. R. 178; Fed. Cas. 10506.)

Where a debtor is arrested, under a warrant issued pursuant to the provisions of a state law, for fraudulently conveying his property prior to the passage of the Bankrupt Act, and the defendant moves to quash the warrant on the ground that before it was issued he had applied for a discharge, proceedings on which are pending, the motion to quash will be granted, and the title to the property fraudulently conveyed will be regarded as vested in the assignee. (*Goodwin v. Sharkey*, 8 N. B. R. 188.)

The statutory trust of creditors in real estate held by the wife of a debtor, who is subsequently adjudicated a bankrupt, inures as assets to the assignee when the estate is purchased by the bankrupt prior to bankruptcy and is paid for with his own money in fraud of his creditors. (*In re Meyers*, 1 N. B. R. 162; 2 Ben. 424; Fed. Cas. 9518.) A conveyance of lands for the purpose of protecting the same from sale for the benefit of creditors of the grantor is valid as between the grantor and grantee, and vests a valid title and estate thereto in the vendee which would pass to his assignee in bankruptcy. (*In re O'Bannon*, 2 N. B. R. 6; Fed. Cas. 10894.) An assignment of lands for the benefit of such creditors as should sign a compromise agreement and of none others is void as against the assignee in bankruptcy. (*In re Broome*, 8 N. B. R. 118; Fed. Cas. 1967.)

No payment by or to a bankrupt subsequent to the commencement of bankruptcy proceedings in relation to transactions which took place prior to such date is valid, even though made or received *bona fide* or without notice. (*Mays v. The N. Nat. Bank*, 4 N. B. R. 147.)

**Lien for rent as against assignee.**—If the landlord have no lien on the bankrupt tenant's goods as against the bankrupt on the day the petition is filed he has none subsequently as against the assignee. (*In re Butler*, 6 N. B. R. 501; 19 Pittsb. Leg. J. 146; 8 Pittsb. Rep. 369; Fed. Cas. 2236.) The levying of a distress warrant after the commencement of proceedings in bankruptcy, but before the appointment of the assignee, does not give the landlord a lien on the property levied upon as against the assignee. (*Morgan v. Campbell, Ass.*, 11 N. B. R. 529.)

**Assignee's relations to leases.**—Bankruptcy and judgments are involuntary, and do not avoid covenants against assignments and transfers, either in leases or policies of insurance. (*Starkweather v. Cleveland Ins. Co.*, 4 N. B. R. 110; 8 Chi. Leg. News, 77; 28 Leg. Int. 36; 10 Amer. Law Reg. (N. S.) 333; 5 Amer. Law Rev. 568; Fed. Cas. 18906.) An assignee who knows nothing of the existence of a lease effected by the

bankrupt is not bound by its covenants. There must be some unequivocal and positive act of acceptance of the lease before the assignee can be held liable. (In re Washburn, 11 N. B. R. 66; Fed. Cas. 17211.) The assignee, unless restrained by the terms of the lease itself, may adopt or reject it on behalf of the estate, as he finds most beneficial for the creditors, and may take a reasonable time for decision. Where the rent is very large a speedy decision would be demanded. (In re Laurie, Blood & Hammond, 4 N. B. R. 7; White v. Griffing, 18 N. B. R. 399.) Until the assignee elects to accept a lease as assignee, he does not become liable for rent accruing after the adjudication in bankruptcy. (In re Ten Eyck & Choate, 7 N. B. R. 26; Fed. Cas. 13829; In re Laurie, Blood & Hammond, 4 N. B. R. 7.) Where the assignee accepts a lease held by the bankrupt, and sells the interest so acquired to the lessor, the guarantor of the lease is discharged from all liability accruing after commencement of the bankruptcy proceedings, as the lease is extinguished. (White v. Griffing, 18 N. B. R. 399.) A lease which cannot be assigned without the consent of the landlord is canceled by the bankruptcy of the tenant. (In re Breck & Schermerhorn, 12 N. B. R. 215; 8 Ben. 93; Fed. Cas. 1822.)

**Title to funds in bank, etc.**—The obligation incurred by a banker is not fiduciary in its nature, but is the liability only of an ordinary debtor, and his assignee will not be required to pay, out of funds belonging to the bank, the amount of a note and interest, on the ground that it had been placed in the bank simply for collection, the customer's account having been overdrawn at the time of crediting the proceeds on the books of the bank. (In re Bank of Madison, 9 N. B. R. 184; 5 Biss. 515; Fed. Cas. 890.) Where a depositor, immediately after making a deposit, draws a check for the amount in payment of a draft drawn by the bank, the title to the money deposited passes to the bank, although the banker was insolvent and knew at the time that the draft would be dishonored, and such depositor is only entitled to share *pro rata* with the other creditors. (In re King, 8 N. B. R. 285.) Where one buys of a banker, afterwards bankrupt, a check on another bank that is not presented for payment until after bankruptcy of the drawer, when payment is refused, the funds in the bank pass to the assignee of the bankrupt and the purchaser is not entitled to priority of payment. (In re Smith, 12 N. B. R. 459; 2 Cin. Law Bul. 119; Fed. Cas. 12990.) An arrangement between two banks, by which the one acts as agent for the other for clearing-house purposes, the latter agreeing to keep on deposit with the former sufficient funds to meet all its checks which are received at the clearing-house, creates the relation of debtor and creditor upon the bankruptcy of the former, and the amount so held on deposit passes to the assignee. (Phelan, Ass., v. Iron Mountain Bank, 16 N. B. R. 308; 4 Dill. 88; 5 Cent. Law J. 351; Fed. Cas. 11069.) The title to the money in the bank, upon the presentation of a check by the payee thereof, is superior to the banker's lien for maturing paper, and will pass to and may be enforced

by the assignee of the payee. (*Fourth Nat. Bank of Chicago v. City Nat. Bank of Grand Rapids, Mich.*, 10 N. B. R. 44.)

**Assignee's rights as to commercial paper, etc.**—The payee of a negotiable bill or note, who sells or delivers the same before bankruptcy without indorsement, may after bankruptcy indorse it so that the holder can maintain an action thereon in his own name. (*Hersey v. Elliott*, 18 N. B. R. 858.) The mere presentation of an ordinary commercial bill of exchange to the drawee, without acceptance by the latter, who holds funds of the bankrupt by whom the bill is drawn, does not operate as an appropriation or equitable assignment of the amount drawn for, and creates no lien as against such funds, and the assignee of the bankrupt will be entitled to the funds. (*Randolph & Co. v. Canby, Ass.*, 11 N. B. R. 296; *Fed. Cas.* 11559.) Where a trustee has proved the claim for a note against the estate of the payee in bankruptcy, and where the holder has not, on the faith thereof, changed his position in regard to the note, the trustee is not estopped from disputing the claim of the holder. (*In re Dodge et al.*, 17 N. B. R. 504; 9 Ben. 480; *Fed. Cas.* 3948.) Notes given for the excess over legal interest are not provable in bankruptcy, and must be surrendered to the assignee. (*Shaffer v. Fritchery & Thomas*, 4 N. B. R. 179; *Fed. Cas.* 12697.)

It having been represented by a firm that certain notes are business paper, and the holder having parted with his money on the faith of the representation, the assignee of the firm cannot deny it. (*In re Many et al.*, 17 N. B. R. 514; *Fed. Cas.* 9054.) Where one gives another, in the regular course of business and for valuable consideration, a promissory note, and delivers certificates in pledge, and becomes bankrupt, the refusal of the payee to return the certificates if he does not prove his claim does not amount to a conversion thereof. (*Yeatman v. New Orleans Savings Institution*, 17 N. B. R. 187; 95 U. S. 764.)

Where a banking society has not for years conducted its business as a bank, but has pursued a policy of liquidation by set-off, the deposits being a commodity represented by papers in the form of checks, and such papers do not represent money, are not payable at sight, and are limited in negotiability, they are not checks, but mere evidence of assignment of choses in action, and those selling them are not responsible to the assignee of the society for the face value thereof. (*Harmanson, Ass. v. Bain et al.*, 15 N. B. R. 178; 1 Hughes, 188; *Fed. Cas.* 6072.)

**Stockholders' liability.**—A stockholder cannot, after the company has become insolvent, avoid his liability on the ground that false representations were made to him that no assessment could be made on his stock. (*Upton, Ass. v. Hansbrough*, 10 N. B. R. 368; 8 Biss. 417; 5 Chi. Leg. News, 242; 7 West. Jur. 288; *Fed. Cas.* 16801.) Where one, induced by false representations, takes stock in a corporation two years before its bankruptcy, and in payment gives his promissory note secured by a deed of trust, and during such period makes no inquiry as to the financial condition of the corporation, he cannot, after the bankruptcy thereof,

rescind his purchase of stock and avoid the obligation. (*Farrar v. Walker, Ass., et al.*, 13 N. B. R. 82; 3 Dill 506, note; 1 N. Y. Weekly Dig. 229; 2 Cent. Law J. 670; Fed. Cas. 4679.)

**Limitation of title of assignee in case of stockholders.**—The individual liability of stockholders for the debts of the corporation to the amount of their stock is neither property, nor a right of property, nor a credit of the bankrupt corporation, and the assignee has no legal or equitable right or interest therein. (*Dutcher, Ass., v. Marine Nat. Bank of New York et al.*, 11 N. B. R. 457; 12 Blatchf. 435; Fed. Cas. 4203.) Where creditors of an insolvent corporation are also stockholders, they will not be permitted to deduct the amount of their claims from their proportions of the unpaid capital; yet if their debts be proved in bankruptcy, deductions may be made, perhaps, from the assignee's demands, equal to their estimated dividends. (*Wilbur, Ass., v. Stockholders*, 18 N. B. R. 178; 13 Phila. 479; 35 Leg. Int. 346; 26 Pittsb. Leg. T. 15; Fed. Cas. 17636.) An assignee of corporate stock who has caused it to be transferred to himself on the books of the company and holds it as collateral security for a debt due from his assignor is liable for unpaid balances thereon to the company or to the creditors of the company after it has become bankrupt. (*Pullman v. Upton, Ass., etc.*, 17 N. B. R. 489; 96 U. S. 323.) Where by the articles of a stockholders' association a seat in it, in the event of insolvency of the member, is required to be disposed of and the proceeds applied first exclusively to the payment of debts due other members, the assignee of the bankrupt broker is only entitled to the surplus after other members are paid in full. (*Hyde, Ass., v. Woods et al.*, 10 N. B. R. 54; 1 Amer. Law T. Rep. (N. S.) 354; 2 Sawy. 655; Fed. Cas. 6975.)

**Insurance.**—When a debtor at his own expense effects an insurance on his life, as security to a creditor, the representative of the debtor is entitled to the surplus after the debt is paid. If such debtor, in his lifetime, pay the debt, he is entitled to have the policy delivered up to him. (*In re Newland*, 7 N. B. R. 477; 6 Ben. 342; Fed. Cas. 10170.) Where a creditor takes out an insurance on the life of his debtor as security for the debt due him, and pays all the premiums, proves his debt in bankruptcy and receives dividends thereon, and receives in full the original amount of the debt from the insurance company, upon the death of the bankrupt prior to the declaration of the last dividend, after deducting the premiums paid by him with interest, the creditor must pay to the assignee all over the amount sufficient, with the dividends and payments previously made, to pay the debt in full. (*In re Newland*, 9 N. B. R. 62; 7 Ben. 63; 2 Ins. Law J. 860, 895; 4 Bigelow, Ins. Cas. 283; Fed. Cas. 10171.) An adjudication of bankruptcy terminates the interest of the bankrupt in any policy of insurance, and it is void; but an insurance company may consent to continue its liability by the usual transfer of the policy to the register in charge of the bankruptcy proceedings, until an assignee shall have been appointed, and may also transfer the policy to the assignee when appointed. (*In re Carow*, 4 N. B. R. 178; 41 How.



Pr. 112; Fed. Cas. 2426.) Where a bankrupt is at the time of adjudication the owner of a building covered by a policy of insurance providing that, "if the title to the property is transferred or changed, this policy shall be void," and "if without the written consent of the company this policy be assigned, it shall be void," and the building is destroyed by fire after the transfer to the assignee, the transfer, being by operation of law, does not avoid the policy, and the assignee may recover the insurance money. (*Starkweather v. Cleveland Ins. Co.*, 4 N. B. R. 110; 3 Chi. Leg. News. 77; 28 Leg. Int. 36; 10 Amer. Law Reg. (N. S.) 333; 5 Amer. Law Rev. 568; Fed. Cas. 13808.) Where an insurance company reorganizes under a special charter giving a right to increase its capital and issues certificates of stock, twenty per cent. only of the par value thereof being required to be paid, the stockholders will, upon the bankruptcy of the company, be liable for the unpaid balance due on such certificates. (*Upton, Ass., v. Hansbrough*, 10 N. B. R. 368; 3 Biss. 417; 5 Chi. Leg. News, 242; 7 West. Jur. 238; Fed. Cas. 16801.)

**Assignee's relation — Partnership property.**— Where a surviving partner is adjudged a bankrupt as such, and as an individual, his assignee is entitled to the partnership assets (*In re Temple*, 17 N. B. R. 345; 4 Sawy. 62; Fed. Cas. 18825); and his share in the joint estate will vest in the assignee, though the firm is not declared bankrupt. (*Wilkins v. Davis*, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664.) The assignee of a bankrupt firm takes by the assignment all the property of the firm and of the individual members thereof, even though part of the property may be out of the district in which the bankrupts reside, and owned in part by the partners not joined in bankruptcy proceedings. (*In re Leland*, 5 N. B. R. 222; 5 Ben. 168; Fed. Cas. 8228.) Where agents of a corporation consign goods thereof for sale to a firm, of which one of the agents is a member, and the firm accepts and pays drafts of the agents to an amount in excess of all their consignments before receipt of the goods, such acts do not constitute a payment, and the firm is liable. (*In re Baxter et al.*, 18 N. B. R. 62; Fed. Cas. 1119.)

An assignee of an individual member of a firm appointed upon his petition alone acquires no title to the property of the firm, whether the firm be existing or dissolved. (*Hudgins v. Lane & Smithson*, 11 N. B. R. 462; 2 Hughes, 361; Fed. Cas. 6827.) Where goods are obtained through a misrepresentation, by a firm composed of several members, a return of the goods or their proceeds to the creditor will be valid, as against the assignee of two of the creditors, if the goods have not lost their identity, so as to form a part of the property of the bankrupt. (*Montgomery, Ass., v. Bucyrus Machine Works*, 14 N. B. R. 193; 92 U. S. 257.)

**Interest of wife in property of bankrupt.**— If a husband receive money from his wife and invest it in realty in her name until he accumulates property of considerable value by his skill and energy, the property is liable to his assignee. (*Muirhead, Ass., v. Aldridge et al.*, 14 N. B. R. 249; 2 N. Y. Wkly. Dig. 480; 33 Leg. Int. 213; Fed. Cas. 9904.) Where

a bankrupt and his wife build a house on land to which the latter acquires the title with funds furnished by both, the assignee is entitled to a conveyance in the right of the wife by her and her husband, of an undivided one-half interest in the premises, to be lessened by the amount of the homestead right. (Johnson, Ass., v. May et al., 16 N. B. R. 425; Fed. Cas. 7397.) A valid conveyance may be made by an assignee of land held by the husband at the time of bankruptcy, without reserving or providing for dower interest. (In re Kelly v. Strange, 2 N. B. R. 2; Fed. Cas. 7676.)

A gift by a bankrupt to his wife before adjudication, and not in contemplation of insolvency, of funds which were used in improving the separate estate of the wife, does not vest him with such an interest therein as would pass to his assignee. (In re Wyatt, 2 N. B. R. 94; 1 Chi. Leg. News, 107; Fed. Cas. 18106.) The legal title to a policy of insurance on the life of a husband, taken out by him for the benefit of his wife, is vested in the wife and cannot be assigned by him (In re Bear and Steinberg, 11 N. B. R. 46; 1 Cent. Law J. 607; Fed. Cas. 1178); and a bankrupt whose wife takes out a policy of insurance on her own life for his benefit, pays the premiums out of her separate estate, and dies after the adjudication of bankruptcy, is entitled to the proceeds of such policy as against his assignee. (In re Owen & Murrin, 8 N. B. R. 6; Fed. Cas. 10627.) Where a bankrupt, when solvent, conveys land to his wife, reserving a power of revocation and appointment to other uses, such power does not pass to the assignee. (Jones, Ass., v. Clifton et al., 19 N. B. R. 424; 101 U. S. 225.) Where real estate is conveyed to a bankrupt and his wife to be held in entirety, and the wife obtains a decree of divorce, if the divorce operate to transform the joint tenancy into a tenancy in common, the interest of the bankrupt as tenant in common is a subsequent acquisition which cannot be claimed by his assignee. (In re Benson, 16 N. B. R. 377; 8 Biss. 116; Fed. Cas. 1328.) Where a debtor files his petition in bankruptcy after the passage of an act restoring the common-law right of dower, and dies after issuance of the warrant in bankruptcy, the wife is entitled to dower in lands owned by the bankrupt at the date of filing of the petition, but she is not entitled to exempted personal property. (In re Hester, 5 N. B. R. 285; Fed. Cas. 6437.) Where there is at the time of filing of the petition an equitable interest in a bankrupt which passes to the assignee, the widow is entitled to one-third of such interest absolutely as against the assignee. (Warford, Ass., v. Noble et al., 19 N. B. R. 440.) Where a wife's right of dower is established against the assignee, an exception to the confirmation of the sale of real estate, by the purchaser, on the ground that such sale was subject to the dower right, when it was stated at the sale that the property would be conveyed free from all incumbrances, will be sustained. (In re Angier, 4 N. B. R. 199; 1 Amer. Law T. Rep. Bankr. 248; Fed. Cas. 388.) Where a wife executes a mortgage on her realty to secure a loan, the money obtained being used by her husband to pay his own debts, the amount exceeding what he would be entitled to by the curtesy, and

he and the wife unite in a general assignment of all his property, expressly reserving that of the wife, and the wife dies, and her realty being sold realizes a sum greater than the incumbrances, the heirs or representatives of the wife are entitled to the fund. (*Shippen and Robbins' Appeal*, 15 N. B. R. 553.)

**The relation of assignee to choses in action.**—The husband has a right to the chose in action of the wife, and the law reduces it into his possession. The bankrupt law gives over all that the husband had to the assignee. The question of survivorship is laid aside by the bankruptcy. (In *re Boyd*, 5 N. B. R. 199; 2 *Hughes*, 349; *Fed. Cas.* 1745.) A claim against the government for property of a bankrupt destroyed "during the war" will pass to his assignee (*Phelps, Ass. v. McDonald et al.*, 16 N. B. R. 317); also a claim against the United States for cotton seized by the military forces thereof during the war of the rebellion. (*Erwin v. United States*, 19 N. B. R. 173; 97 U. S. 392; *Phelps, Ass. v. McDonald et al.*, 19 N. B. R. 187; 99 U. S. 298.) Where, under state laws, convicts may be hired in any number not exceeding one hundred in any one contract, and a bankrupt before his bankruptcy executes four contracts with different sureties for one hundred convicts, each of the contracts is valid. (In *re Southwestern Car Co.*, 19 N. B. R. 404; 9 *Biss.* 76; *Fed. Cas.* 18192.) A party who purchases a chose in action from the assignee cannot maintain an action thereon in his own name in a state court where the laws of the state do not permit an assignee of a chose in action to sue in his own name. (*Leach v. Greene*, 12 N. B. R. 376.) A voluntary assignee is a mere representative of the assignor and takes his choses in action, not as a purchaser for value, but subject to all the equities attaching to them. (*City Bank of Harrisburg v. Sherlock*, 16 N. B. R. 62.)

**Choses in action that do not pass to the assignee.**—Rights of action for torts to the debtor's person do not pass to the assignee (*Wright, etc. v. Bank*, 18 N. B. R. 87; 18 *Alb. Law T.* 115; 10 *Chi. Leg. News*, 348; 6 *Reporter*, 239; 26 *Pittsb. Leg. T.* 11; *Fed. Cas.* 18078; *Noonan v. Orton*, 12 N. B. R. 405); nor do choses in action held by the bankrupt in a fiduciary capacity (In *re Bank of Madison*, 9 N. B. R. 184; 5 *Biss.* 515; *Fed. Cas.* 890); nor an action for the malicious abuse of the garnishee process (*Noonan v. Orton*, 12 N. B. R. 405); nor a cause of action *ex delicto* (In *re Brick*, 19 N. B. R. 508); nor a chose in action of a wife not reduced to possession by her husband. (*Wickham, Ass. v. Valle's Executors et al.*, 11 N. B. R. 83; *Fed. Cas.* 17613.) A claim for compensation for the destruction of a vessel by a Confederate cruiser, equipped and sent out in England, may be transferred to the wife at a time when the claimant is free from debt. (*Williamson et al., Ass. v. Colcord and Wife*, 13 N. B. R. 319; 1 *Hask.* 620; *Fed. Cas.* 17752.) A chose in action which is not negotiable, and on which the assignee must sue in the name of the assignor, does not become a mutual debt or credit in the hands of the assignee, so as to be a matter of set-off. (*Rollins, Ass. v. Twitchell & Co.*, 14 N. B. R. 201; 2 *Hask.* 66; 5 *Amer. Law Rec.* 247; *Fed. Cas.* 12027.)

**Rights of assignee to payments made to bankrupts.**—Payments made by creditors to a bankrupt after the filing of the petition in bankruptcy are invalid as against the assignee (*In re J. P. Hayden*, 7 N. B. R. 192; Fed. Cas. 6257; *Babbitt v. Burgess*, 7 N. B. R. 561; 4 Dill. 169; 5 Chi. Leg. News, 326; Fed. Cas. 693), even though without knowledge of the appointment of the assignee. (*Duffield et al., Ass., v. Horton et al.*, 16 N. B. R. 59.) An injunction order and proof of its service are competent evidence to show that a debtor making payment to a bankrupt after adjudication had notice of the demand of the assignee. (*Babbitt v. Burgess*, 7 N. B. R. 561; 2 Dill. 169; 5 Chi. Leg. News, 326; Fed. Cas. 693.) A payment to a bankrupt after the filing of the petition for adjudication will not discharge the debtor's liability to an after-appointed assignee. Until the appointment of an assignee or the dismissal of the petition, the right of action against the debtor is suspended. (*Booth v. Meyer et al.*, 14 N. B. R. 575.) Where an attachment is issued within four months preceding the commencement of bankruptcy proceedings and is served upon the debtor of the bankrupt, and, pending the bankruptcy proceedings, a general judgment is recovered in the action and an execution issues, and the debtor pays the sheriff the amount of his indebtedness, such payment is voluntary and does not discharge his obligation to the bankrupt or to the assignee. (*Duffield, Ass., v. Horton et al.*, 19 N. B. R. 13.)

**Claims against property in hands of assignee.**—A bankrupt court has no authority to deprive the assignee of the possession of the bankrupt's property without due process of law, unless the parties consent to a trial by the court. (*Wood Mowing & Reaping Machine Co. v. Brooke*, 9 N. B. R. 395; 2 Sawy. 576; Fed. Cas. 17980.) Where a claim to property in the hands of the assignee is set up, and the assignee denies the validity of the claim and asserts title to be in himself, as property of the bankrupt, the claimant cannot proceed by a summary petition. (*Hurst v. Teft, Ass.*, 13 N. B. R. 108; 12 Blatchf. 217; Fed. Cas. 6939.) In taking possession of the bankrupt's estate, the assignee takes the place of a sheriff or marshal, and if the property would not be recoverable from them it is not from him. (*Aiken v. Edrington et al.*, 15 N. B. R. 271; Fed. Cas. 111.) The equities of creditors of a bankrupt, to whom property was fraudulently transferred before bankruptcy, and of creditors of the transferrer, are equal, and the assignee of the bankrupt cannot be required to surrender the property. (*Aiken v. Edrington*, 15 N. B. R. 271; Fed. Cas. 111.) The defense of usury can be pleaded by the assignee in bankruptcy so long as any part of the debt for which the usury was or was agreed to be paid remains unpaid. (*In re Prescott*, 9 N. B. R. 385; 5 Biss. 523; 6 Chi. Leg. News, 151; Fed. Cas. 11389.) A sale of goods with a verbal agreement that the vendor is to remain in possession and carry on the business under his own name until such time as the vendee should please to take possession is fraudulent and void as to creditors, and

such vendee is not entitled to the goods as against the vendor's assignee. (In re Morrill, 8 N. B. R. 117; 2 Sawy. 356; Fed. Cas. 9821.) Where a debtor, shortly before filing his petition in bankruptcy, purchases a quantity of carpets, and the vendor brings replevin, the sheriff takes possession, the bankrupt bonds them back, they come into the hands of the assignee, and the parties apply to the register, asking that the goods be held by the assignee to await the determination of ownership, since the title is in dispute, application must be made to the court by petition, but otherwise the register may dispose of the matter. (In re Graves, 1 N. B. R. 19; 3 Ben. 100; Fed. Cas. 5709.) A state cannot tax the funds in the hands of an assignee. (In re Booth, 14 N. B. R. 232; 8 Chi. Leg. News, 307; 1 Cin. Law Bul. 181; Fed. Cas. 1645.)

**Assignee's relation to property in general.**—The assignee is not bound by the bankrupt's ratification or acquiescence in a sale of collaterals made after the commencement of the proceedings in bankruptcy. (Sparhawk et al. v. Drexel et al., 12 N. B. R. 450; 1 Wkly. Notes Cas. 560; Fed. Cas. 13204.) Where the security of a creditor is reduced to money, the assignee is entitled to any surplus over and above the amount necessary to liquidate the debt. (In re Newland, 9 N. B. R. 62; 7 Ben. 63; 2 Ins. Law J. 860, 895; 4 Bigelow, Ins. Cas. 283; Fed. Cas. 10171.) A secured creditor who proves his claim as unsecured relinquishes his right to any and all securities he holds for his debt, and must deliver the same to the assignee. (In re Granger & Sabin, 8 N. B. R. 30; Fed. Cas. 5684.) Where a bankrupt does not satisfactorily explain a deficit in his assets, he must pay over to the assignee the amount of such deficit. (In re Peltasohn et al., 16 N. B. R. 265; 4 Dill. 107; 10 Chi. Leg. News, 9; Fed. Cas. 10912.) Where a will devises bonds to A., B. and C. and their heirs, provides against alienation and for rents and profits to be paid them by executors, and in case of death of either A., B. or C. without lawful issue the share of such an one is to go to the survivors and heirs forever, and at death of testator C. has several children living, the remainder to the issue of C. is vested and alienable, and passes to a general assignee in bankruptcy during the life of C. (Smith v. Scholtz et al., 17 N. B. R. 520.)

An assignee who redeems pledges is subrogated to the rights of the pledgee until, from the proceeds of the pledges redeemed, the fund is made good. (McLean et al., Ass., v. Cadwalader, 15 N. B. R. 883.)

It is not a ground for nonsuit that the plaintiff has been adjudged a bankrupt since the suit was begun, as the court may direct the jury, if they find for the plaintiff, to find that he may recover for the use of his assignee in bankruptcy. (Wooddail, Adm'r, v. Austin & Holliday, 10 N. B. R. 545.)

Where, by agreement between a bankrupt and another, the latter agrees to furnish the bankrupt goods of his manufacture at a fixed price, the bankrupt to pay all freight, storage and charges, and at the expiration of each three months to pay for all goods sold or shipped from the

bankrupt's warehouse, the assignee is entitled to the proceeds of all the goods sold by the bankrupt. (In re Linforth et al., 16 N. B. R. 435; 4 Sawy. 370; 1 San Fran. Law J. 199; Fed. Cas. 8369.) Where a person has the exclusive right to sell another's machines, with the understanding that he is to pay for them if sold within a certain time, and if not he is "to take them for the next season," and the transaction appears upon his books and upon the owner's invoices as a sale, the property in the machines passes upon delivery and upon bankruptcy of the purchaser to his assignee. (Wood Mowing and Reaping Machine Co. v. Brooke, 9 N. B. R. 395; 2 Sawy. 576; Fed. Cas. 17980.) A contract for the conditional delivery of goods to a debtor gives his creditors no title to them until the account for the same is paid. (Sawyer et al. v. Turpin et al., 5 N. B. R. 339; 2 Lowell, 29; Fed. Cas. 12410.)

Where a bankrupt had a fee title in a street, subject to the public easement, which street once terminated in a lake, but accretions accumulated between the street and the lake shore, the right of accretion being a vested one passes to the assignee. (Kinzie v. Winston, 4 N. B. R. 21; Fed. Cas. 7835.) After the filing of a petition in involuntary bankruptcy, no person can acquire any interest by a receivership created by a state court, or otherwise, in the property of the debtor, which the decree in bankruptcy will not displace. (Smith v. Buchanan et al., 4 N. B. R. 133; 3 Alb. Law J. 97; Fed. Cas. 13016.)

**Property in general in which assignee has no title.**—The assignee must surrender to the owners property found in the possession of the bankrupt but belonging to others. (In re Noakes, 1 N. B. R. 164; Bankr. Ct. Rep. 162; Fed. Cas. 10231; In re Pusey, 7 N. B. R. 45; Fed. Cas. 11478.) Where, under a written contract, ownership of personal property is not to pass to the vendee until the full amount of the stipulated price is paid, the assignee in bankruptcy is not entitled to the property unless he makes payment of the balance due. (In re J. H. Lyon, 7 N. B. R. 182; 4 Chi. Leg. News, 421; Fed. Cas. 8614.) Where a bankrupt has charge of, and conducts in his own name, the business of another, taking half of the net profits as his compensation, his right thereto does not pass to his assignee. (In re Beardsley, 1 N. B. R. 121; 1 Amer. Law T. Rep. Bankr. 91; Fed. Cas. 1184.) Hides purchased by a bankrupt to be tanned into leather under an agreement by which another, for whom the leather is to be manufactured, is to furnish the money, belong to the party furnishing the money, although some of the hides may have been purchased with the proceeds of drafts which such party refused to accept. (Safford et al. v. Burgess, Ass., 16 N. B. R. 402; Fed. Cas. 12213.) Where a sale of scales is agreed to, and the payment is to be made after the delivery and the setting up thereof, and they are delivered and partly set up, when the purchaser is declared a bankrupt, the title does not pass to the bankrupt. (In re Pusey, 6 N. B. R. 40; Fed. Cas. 11477.)

Where the bankrupt under a general contract has rendered partial

service, but has not completed the contract prior to the filing of the petition, but subsequently fulfills the same, unless the contract for payment is contingent upon full performance of the services, the compensation will be apportioned between the assignee and the bankrupt in proportion to the value of the services rendered before and after the bankruptcy. (In re Jones, 4 N. B. R. 114; Fed. Cas. 7448.) The assignee of a bankrupt who contracted for the manufacture of and received pay for an article is estopped to deny that an article of the kind contracted for, in the possession of the bankrupt at the time of the adjudication, is the one paid for. (Ex parte Rockford, Rock Island & St. Louis R. R. Co., In re McKay & Adams, 8 N. B. R. 12; 1 Lowell, 345; 2 Amer. Law T. 105; 1 Chi. Leg. News, 337; 1 Amer. Law T. Rep. Bankr. 183; Fed. Cas. 11978.)

Where the bankrupt is a non-resident when the cause of action accrues, and it does not appear when he became a resident of the state, nor that since the cause of action accrued he had resided more than three years in the state, the assignee cannot set up the state act of limitations as a defense. (Capelle, Ass., v. Trinity M. E. Church of Chester, 11 N. B. R. 586; Fed. Cas. 2392.) If a bill of sale be recorded in the clerk's office at one place, upon a representation by the bankrupt that he resided there, it will bind the assignee, although the bankrupt actually resided in another place. (Allen v. Whittemore, Ass., 14 N. B. R. 189; 8 Ben. 485; Fed. Cas. 241.) A lease executed by the bankrupt prior to the bankruptcy and not recorded, and free from fraud as to the creditors of the bankrupt, is valid as against the assignee though he had no notice of it. (Goss v. Coffin, 17 N. B. R. 332.) A tenant who occupies land under an agreement to pay rent, with provision for ouster and distraint upon default, has no such interest in the land as will pass to his assignee. (In re O'Dowd, 8 N. B. R. 451; Fed. Cas. 10439.)

**Assignee's interest in exempt property.** See EXEMPTIONS, sec. 6.

**Lien of assignee.**—The assignee takes the property of the bankrupt with the like right, title, power and authority to sell it as the bankrupt could have done. He acquires no other or better title to the property than the bankrupt had, and if there were a lien on the property in the hands of the bankrupt the same lien follows the property into the hands of the assignee (In re Winn, 1 N. B. R. 131; 1 Amer. Law T. Rep. Bankr. 17; Fed. Cas. 17876), if it were perfected before the commencement of the proceedings in bankruptcy. (In re Smith et al., 1 N. B. R. 169; 2 Ben. 482; 1 Amer. Law T. Rep. Bankr. 112; Fed. Cas. 12978.) He acquires his title to movable property found upon the premises, subject to the rights of all other persons; and where rent is a lien upon the personal property of the bankrupt it must be paid first out of the proceeds of the sale. (Longstreth v. Pennock et al., 12 N. B. R. 95, U. S. S. C.) The landlord will be entitled to prove his claim in bankruptcy for the unexpired term of a lease beyond one year, even though he has been

preferred, under a state law, for his rent up to the end of the year. (In re Wynne, 4 N. B. R. 5; 2 Amer. Law T. Rep. Bankr. 116; Fed. Cas. 18117.)

Where a corporation gives a deed of trust in which it agrees to keep the premises insured and to make the policies payable to the trustee, and to deliver them when effected, and the insurance, though effected, is not so made payable nor are the policies delivered, and the buildings burn and the corporation becomes bankrupt, whereupon the assignee collects the insurance, the trustee, through the covenant in the deed, has an equitable lien upon the proceeds. (In re Sands Ale Brewing Co., 6 N. B. R. 101; 3 Biss. 175; 4 Chi. Leg. News, 137; 6 Amer. Law Rev. 574; Fed. Cas. 12307.)

**Preferences.**— Where an assignment is made for the benefit of creditors, the title to property so assigned rests in the common-law assignee until such assignment is set aside, and does not vest in the assignee in bankruptcy by the mere force of the adjudication and his appointment as assignee. (Belden, Ass., v. Smith et al., 16 N. B. R. 302; Fed. Cas. 1242.) A conveyance of real estate made to defraud creditors is not void, but voidable, and the property so conveyed does not absolutely vest in the assignee. (Phelps et al. v. Curts, 16 N. B. R. 85.) An assignment made *bona fide* twelve months prior to the filing of the petition in bankruptcy is good against the assignee. (In re Arledge, 1 N. B. R. 195; Fed. Cas. 533.)

Where a lease is made of a hotel for a term of years and it is transferred to a creditor to secure a debt, and the lessor becomes bankrupt, the assignee takes the estate subject to such lease. (Meador et al. v. Everett, Ass., 10 N. B. R. 421; 1 Cent. Law J. 453; Fed. Cas. 9376.)

**Title to realty.**— If a deed without any certificate of acknowledgment be good against a bankrupt, it is good against his assignee. (In re Kansas City Stone and Marble Mfg. Co., 9 N. B. R. 76; Fed. Cas. 7610.) Where a limitation has ceased and division is made of an estate, the bankrupt taking his share in fee, such land is liable to the bankrupt's debts, although contrary to the stipulation in the instrument by which he takes it. (In re Myrick, 3 N. B. R. 38; Fed. Cas. 10000.)

b. All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

While real and personal property may be sold subject to the approval of the court, after appraisal, at least ten days' notice by mail must be



given to all creditors of the proposed sales of property (sec. 58—4), which sales must be by public auction unless otherwise ordered by the court. For good cause the court may authorize the trustee to sell any specified portion of the bankrupt's estate at private sale, in which event he must keep an accurate account of each article sold and the price received therefor and to whom sold. (Orders XVIII.)

**Sale of property of bankrupt—Control of court thereover.**—A court in bankruptcy does not possess the power to order in a summary way the sale of property, real or personal, although the same is claimed by the assignee, even though the title be in dispute, if the estate be in actual possession of a third person holding as owner and claiming absolute title to it, whether derived from the debtor before he was adjudged bankrupt or from another (*Gifford et al. v. Helms et al.*, 19 N. B. R. 118; 98 U. S. 248); but it has power to order the sale of the incumbered property and the money arising therefrom brought into court to be distributed among the creditors holding the securities. (In *re Salmons*, 2 N. B. R. 19; 15 Pittsb. Leg. J. (O. S.) 541; Fed. Cas. 12368.) It may leave the purchasers to establish their titles whenever the occasions may arise. (In *re Alden*, 16 N. B. R. 39; 28 Int. Rev. Rec. 234, 233; 9 Chi. Leg. News, 346; 25 Pittsb. Leg. J. 4; Fed. Cas. 151.) The form of the order is sufficient that directs the sale of the right, title, etc., of the bankrupt, and it need not direct the sale of the right, title, etc., which the general assignee acquired by the decree of bankruptcy. (*Smith v. Scholtz et al.*, 17 N. B. R. 520.) Appraisers will not be appointed to ascertain the value of the assets of an involuntary bankrupt before there has been proof of debts or appointment of an assignee. (In *re Frederick*, 3 N. B. R. 117; 3 Amer. Law T. Rep. Bankr. 71; 2 Chi. Leg. News, 139; 1 Amer. Law T. Rep. Bankr. 181; Fed. Cas. 5092.) A sale cannot be ordered by the court until the appointment of the assignee, as such a course would prevent the election given to the assignee to redeem the property pledged, to sell it subject to the lien, and to release the equity of redemption at an agreed price. (In *re Grinnell & Co.*, 9 N. B. R. 29; 7 Ben. 42; 21 Pittsb. Leg. J. 82; Fed. Cas. 5880.) A sale by the marshal, as messenger, under a special order, prior to the appointment of an assignee, is to be considered as in the nature of a sale made by a provisional assignee. (In *re Hitchings*, 4 N. B. R. 125; Fed. Cas. 6542.) A petition to sell realty belonging to the bankrupt may be presented to the court by the assignee, but he may make such sale without any order of court. (In *re McClellan*, 1 N. B. R. 91; 1 Amer. Law T. Rep. Bankr. 48; Fed. Cas. 8694.) Where property is sold by the assignee without such order, the purchaser will be entitled to the rents and profits of the property from the day of sale, and not from the day of confirmation of the sale by the court. (*Hall v. Scovel*, 10 N. B. R. 295; Fed. Cas. 5945.) In a sale of real estate by the assignee, assuming that it is to be assimilated to a sale under a decree in equity silent as to the manner of sale, it cannot be attacked collaterally and held ab-

olutely void because not made in parcels. (*Smith v. Scholtz et al.*, 17 N. B. R. 520.) The assignee himself must sell the property, and the necessity for the employment of an auctioneer must be affirmatively shown or the auctioneer's charges will not be allowed the assignee by the court. (*In re Sweet et al.*, 9 N. B. R. 48; 21 Pittsb. Leg. J. 82; Fed. Cas. 18686.) Where a party intending to bid at the assignee's sale and the assignee's solicitor agree that the bidder will let the solicitor have the property at a certain price without reference to the selling price, such agreement will not avoid the sale. (*Citizens' Bank v. Ober*, 13 N. B. R. 328; 1 Woods, 80; Fed. Cas. 2731.) A creditor has a right to call for an investigation into the conduct of the assignee in selling the property, even after the latter's account has been filed and approved. (*In re Peabody*, 16 N. B. R. 243; 9 Chi. Leg. News, 243; Fed. Cas. 10866.) A purchaser at a sale by the assignee stands on the same footing with a purchaser at an execution sale. He takes the estate of the bankrupt subject to all equities against it, whether he knows of them or not. (*Steadman v. Taylor*, 17 N. B. R. 283.)

**Sale of incumbered realty.**—A sale of incumbered land by the assignee, subject to the incumbrance, does not divest the lien of the incumbrance. (*Assignee of Wicks & Co. v. Perkins*, 13 N. B. R. 280; 1 Woods, 383; Fed. Cas. 17615.) Where property is incumbered it will be taken for granted that the assignee sold subject to incumbrances, but the lien creditor or creditors must be notified before the sale takes place. (*Meeks v. Whatley*, 10 N. B. R. 498.) The purchaser of property sold subject to a lien by order of the court is estopped to deny the validity of the lien. (*Bucknam v. Dunn et al.*, 16 N. B. R. 470; 2 Hask. 215; Fed. Cas. 2096.) If the interests of all parties demand it, the court will direct the assignee of a bankrupt corporation to sell its real estate discharged of all liens and incumbrances excepting existing and recorded mortgages. (*In re National Iron Co.*, 8 N. B. R. 422; 10 Phila. 274; 30 Leg. Int. 272; 20 Pittsb. Leg. J. 208; Fed. Cas. 10045.) The court has the right to take possession of and sell mortgaged property free from the lien of the mortgage, without first satisfying it. (*In re Kahley*, 4 N. B. R. 124; 3 Chi. Leg. News, 85; 2 Leg. Gaz. 405; Fed. Cas. 7593; *In re Barrow*, 1 N. B. R. 125; 1 Amer. Law T. Rep. Bankr. 63; Fed. Cas. 1057.) In a sale of real estate discharged of liens, by the assignee, interest on such liens should be allowed to the date of the report of distribution. (*In re Devore*, 16 N. B. R. 56; 21 Pittsb. Leg. J. 185, 187; Fed. Cas. 3347.) A judgment creditor who does not perfect his lien by execution and levy is not entitled to the proceeds of the sale of the bankrupt's property by his assignee, free from incumbrances, as against a junior judgment creditor whose lien was perfected prior to the commencement of proceedings. (*In re Mebane*, 3 N. B. R. 91; Fed. Cas. 9380.) Where the assignee sells the bankrupt's real estate discharged of liens, and a judgment, acting as a lien upon the property at the time the order for sale was made, expires the day before

the sale, it should be allowed its proper portion of the fund for distribution. (Davis v. Assignee, etc., 19 N. B. R. 61; 7 Reporter, 484; 36 Leg. Int. 176; 26 Pittsb. Leg. T. 115; Fed. Cas. 8654.) The assignee may, if to the interest of the estate, relieve the property from the lien by discharging the incumbrance, or he may agree with the creditors as to the value of the property, or it may be ascertained by a sale under the direction of the court, when the creditors shall only be such for the balance. (Reed v. Bullington, 11 N. B. R. 408.) Where the assignee applies to the court for leave to sell real estate subject to specified incumbrances, and an order is made, and after the sale the assignee reports that the property has been sold free of all incumbrances other than those specified, the holder of a judgment which is a lien against the property, and who was not a party to any of the proceedings, is not debarred from enforcing his lien, as the court confirms the sale and not the assignee's report. (In re McGilton et al., 7 N. B. R. 294; 3 Biss. 144; 29 Leg. Int. 332; 5 Chi. Leg. News, 1; 20 Pittsb. Leg. J. 29; Fed. Cas. 8798.)

Where a levy is not made at the date of the bankruptcy, the title by operation of law is vested in the assignee, who must make the sale and deposit the proceeds subject to whatever claims may be made upon it. (Pennington v. Sale & Phelan et al., 1 N. B. R. 157; 2 Amer. Law Rev. 776; Fed. Cas. 10939.) The assignee may apply to have a lien ascertained and liquidated, or for an order directing the sale of the property held as security for any debt existing or provable under the bankruptcy, as the most correct means of ascertaining its true value, and may from the proceeds pay to the creditor the amount of his debts covered by the security. (In re Stewart, 1 N. B. R. 42; 1 Amer. Law T. Rep. Bankr. 16; 15 Pittsb. Leg. J. 222; Fed. Cas. 13418.) Where the assignee sells mortgaged realty, and thereafter the transferee of the mortgaged notes, having had the mortgage rendered executory, files a petition claiming the property, he is entitled thereto. (Ray v. Brigham et al., 12 N. B. R. 145, U. S. S. C.) A mortgagee in possession being entitled to retain all property upon which his mortgage is valid, on a sale of such property by order of the court, he should be charged only with the reasonable expenses of the sale of such property, and not with any portion of the costs in bankruptcy. (In re Eldridge, 4 N. B. R. 162; 2 Biss. 362; Fed. Cas. 4330.) Where the property of a bankrupt corporation is sold at the petition of the assignee, under a mortgage, and the proceeds of the sale are not sufficient to pay the mortgaged debt, only the actual costs of the sale are chargeable upon the proceeds thereof. (In re Blue Ridge Railroad Co., 18 N. B. R. 815; 2 Hughes, 224; 8 Chi. Leg. News, 290; 4 Amer. Law Rec. 456; Fed. Cas. 1570.) Where a former assignee of a bankrupt, a second mortgagee, is made a defendant in a suit for the foreclosure of a first mortgage, and dies after entry of a decree *pro confesso*, but before final decree, and his successor is not made a party to the suit, the second mortgage, and the right of the assignee to redeem, are not affected by a sale of the mortgaged premises.

(Avery, Ass. et c. v. Ryerson et al., 16 N. B. R. 289.) Where a mortgagee fails to secure an equitable lien by bill, and the appointment of a receiver of rents or profits of the mortgaged premises after a default, and the premises sell for less than his claim, at a sale by the mortgagor's assignee, he will only be entitled to a *pro rata* share on the deficiency of his claim of the bankrupt's assets. Profits of the mortgaged premises reduced to possession by the mortgagor's assignee prior to sale of the mortgaged premises are to be treated as assets, and the mortgagee cannot claim that a deficiency after sale on his mortgage shall be paid in preference to the claims of other creditors. (In re Snedaker, 4 N. B. R. 43.) The circuit court has jurisdiction to entertain a petition for relief from orders of the district court directing that the bankrupt's land shall be sold, and that the holder of the first lien, a deed of trust, shall be purchaser, the trust bond to be accepted at par in part payment. (In re Alexander, 3 N. B. R. 6; Chase, 295; 8 Amer. Law Reg. (U. S.) 423; 2 Amer. Law T. Rep. Bankr. 81; 16 Pittsb. Leg. J. 91; 2 Balt. Law Trans. 759; Fed. Cas. 160.)

**Exempt property.**—A bankrupt to whom an exemption of real estate to be used as a homestead has been allotted, is vested, under the exemption laws of Ohio, with only a qualified interest therein so long as he uses it as a homestead for his family, with reversion in the assignee, which may be sold by the assignee subject to the bankrupt's interest therein. (In re Watson, 2 N. B. R. 174; 2 Amer. Law T. Rep. Bankr. 93; Fed. Cas. 17271.)

**Dower.**—A sale by the assignee of realty of a bankrupt whose wife claims her dower therein does not divest the dower. (Lazaer v. Porter, Ass., 18 N. B. R. 549; sec. 5044, R. S. For *contra*, see In re Kelly v. Strange, 3 N. B. R. 2; Fed. Cas. 7676.) A wife's right of dower, where she joins in a mortgage of her husband's property, can be barred only by sale of the mortgaged property under a power of sale contained in the mortgage, or by a decree of a court of competent jurisdiction where she can be made a party to proceedings, a sale in bankruptcy proceedings being ineffectual for the purpose. (In re George A. Bartenbach, 11 N. B. R. 61; 2 Amer. Law T. Rep. (N. S.) 33; Fed. Cas. 1068.)

**The sale in general.**—Where the assignee is not made a party to partition proceedings of real estate, he may sell the bankrupt's undivided interest therein. (Smith v. Scholtz et al., 17 N. B. R. 520.) Where one not in debt conveys realty by deed absolute on its face, but in reality in trust to his wife, and afterwards is adjudged bankrupt, until which time he remains in possession of the realty, which is sold by the assignee, and thereafter the deed is recorded, a bill to set aside the sale will be dismissed, as the omission to record is a fraud upon creditors. (Barker v. Smith et al., 12 N. B. R. 474; 2 Woods, 87; 2 Amer. Law T. Rep. (N. S.) 386.) After a bankrupt's discharge an order will not be issued directing the assignee to sell and convey real estate to which the bankrupt did

not have a legal title at the date of adjudication, and which was not included in his schedule of assets, to satisfy an alleged lien created by a judgment recovered prior to adjudication. (*In re Dean*, 8 N. B. R. 188; Fed. Cas. 8701.)

**Sale of personalty.**—Where a levy is made by a sheriff on goods of the bankrupt after the date of his filing a petition in bankruptcy, the assignee must make sale thereof and deposit the proceeds of the goods subject to whatever claims may be determined by the court to be upon them. (*Pennington v. Sale & Phelan et al.*, 1 N. B. R. 157; 2 Amer. Law Rev. 776; Fed. Cas. 10939.) In a sale by the marshal as messenger, under a special order of the court, prior to the appointment of an assignee, of the lease, good-will and fixtures of a store, only such things (or their accessories) as are actually or constructively fastened to the freehold will pass to the purchaser of fixtures; and such a purchaser may make claim upon the funds in the hands of the assignee for the sale of such articles as were properly included under the sale of the fixtures and afterwards resold as movables. (*In re Hitchings*, 4 N. B. R. 125; Fed. Cas. 6542.) Property which has been mortgaged by a bankrupt may be sold by the assignee under the direction of the court discharged of the incumbrances, the lien being remitted to the proceeds of sale, provided the substantial rights of the mortgagee will not be thereby injuriously affected, and the assignee may, for the purpose of such sale, expend money upon finishing chattels which he finds in an incomplete or unfinished condition. (*Foster, Ass., v. Ames*, 2 N. B. R. 147; 1 Lowell, 318; 2 Amer. Law T. Rep. Bankr. 65; Fed. Cas. 4965.) If bank stock be transferred as security for the payment of money loaned, the delivery of possession is complete, the only defect in the title being the non-transfer of the stock on the books of the bank issuing the stock, and the bank can become entitled to the stock only by satisfying the debt which has been secured by the transfer, notwithstanding the fact that it may have purchased a right to them from the assignee. (*Second National Bank of Louisville v. National State Bank of Newark*, 11 N. B. R. 49.) Where one holds a lien as security of the bankrupt on his letters patent, the court may order the letters patent to be sold jointly by the assignee and the holder of the lien and the proceeds obtained deposited pending settlement of suit. (*In re Columbian Metal Works*, 8 N. B. R. 18; Fed. Cas. 8039.) The amount of premiums paid by a husband after his bankruptcy on life insurance policies for the benefit of his wife may be claimed by his creditors, and the claim may be sold for cash and become a lien on the policy, collectible when the policy shall be paid. (*In re Bear & Steinberg*, 11 N. B. R. 46; 1 Cent. Law J. 607; Fed. Cas. 1178.) Where one of several, formerly partners, is adjudicated a bankrupt and receives his discharge, and the assignee sells all the assets to the bankrupt, who afterwards brings an action on a claim so purchased, the statute of limitations runs from the time of adjudication. (*Blackwell v. Claywell et*

al., 15 N. B. R. 300.) An agistor who delivers a bankrupt's cattle to the assignee, without claiming a lien granted him for purchasing stock by a state statute, and allows it to be sold as belonging to the bankrupt's estate and unincumbered, waives the lien. (*In re Mitchell*, 8 N. B. R. 47; 5 Chi. Leg. News, 271; Fed. Cas. 9657.) Where a claim against the government is marked "worthless" in the schedule of assets, and is sold with the bankrupt's other property, the fact that the claim subsequently becomes valuable does not impair the validity of the sale. (*Phelps, Ass., v. McDonald et al.*, 16 N. B. R. 217.)

**Sale set aside.**—A sale of the assets of the bankrupt's estate to him before the appointment of an assignee is void. (*March, Ass., v. Heaton et al.*, 2 N. B. R. 66; 1 Lowell, 278; Fed. Cas. 9061.) The assignee's solicitor cannot bid at the assignee's sale (*Citizens' Bank v. Ober*, 13 N. B. R. 328; 1 Woods, 80; Fed. Cas. 2731); but such objection must be set up in the bankrupt court and not in a collateral action. (*Spilman v. Johnson*, 16 N. B. R. 145.) Where fraud in a sale by the assignee is alleged, every fact which is relied on to establish the fraud should be distinctly stated, and the whole should be verified by some one having knowledge of the circumstances. (*In re Peabody*, 16 N. B. R. 243; 9 Chi. Leg. News, 243; Fed. Cas. 10366.) If the assignee's petition for a private sale of the disputed interests of the bankrupt, an order by the register for such sale, and the assignee's report thereon, are all made on the same day, the order is void and the sale is a nullity. Notice of the petition for the sale of such an interest must be given personally to those claiming adversely, and the sale must be public, and after a public notice. (*Ex parte Bryan, Ass., In re Major*, 14 N. B. R. 71; 2 Hughes, 273; 23 Pittsb. Leg. J. 196; Fed. Cas. 2061.) The purchase from a general assignee of property, which a few months afterward is held at a vastly increased price, cannot be regarded as made in good faith, and may be set aside. When such sale is set aside by the court upon the ground of fraud, an application for the return of the purchase-money will not be granted unless the conveyance deeds be surrendered to be canceled. (*In re Mott*, 1 N. B. R. 9; Fed. Cas. 9879.) A sale to him of stock, held by a creditor as collateral security, for two-fifths of its value, will be set aside, and another sale ordered. The bankrupt court has discretion to refuse to confirm a sale made under its orders, for mere inadequacy of price, such sale being subject to the approval of the court. (*In re Bousfield & Poole*, 16 N. B. R. 481; Fed. Cas. 1703.) Where a suit to foreclose a mortgage is filed and a receiver is appointed before the institution of proceedings in bankruptcy, and the court orders the mortgaged property to be delivered to the assignee from the receiver, which is done against his protest, the property being sold under order of the court, the sale is void, and the trustees under the mortgage may recover the property from the purchasers, to whom the purchase-money will be returned. (*Davis et al., Trustees, v. Railroad Co. et al.*, 13 N. B. R. 258; 1 Woods, 661; Fed. Cas. 3648.) Where,

after adjudication of bankruptcy, the appointment of the assignee and the conveyance by the register of the estate of the bankrupt, the holder of a mortgage brings foreclosure proceedings in a state court, making the assignee a party, and judgment is obtained and the property sold by the sheriff, such proceedings are void. (*In re Brinkman*, 7 N. B. R. 421; Fed. Cas. 1884.)

c. The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

**Title of purchaser from assignee.**—An assignee can transfer only such title as he may possess. (*Second Nat. Bank of Louisville v. National State Bank of Newark*, 11 N. B. R. 49.) When he sells property of the bankrupt incumbered by a mortgage, he conveys only the interest of the bankrupt, subject to the lien of the mortgagee. (*In re Cooper*, 16 N. B. R. 178; Fed. Cas. 3190.) When he sells incumbered property without any special order of the court, he sells it subject to all lawful incumbrances, and can convey no better or higher interest than the bankrupt could have done. (*Ray v. Brigham et al.*, 12 N. B. R. 145.) When he sells to a third person property in which the bankrupt had title at the time of adjudication of bankruptcy, no other court can inquire whether such property was exempt from the assignment in bankruptcy. (*Steele v. Moody*, 16 N. B. R. 558.) A sale of land free from incumbrances does not pass to the purchaser the bankrupt's rights to any portion of the growing crops thereon, stipulated to be paid him by way of rent. (*In re Bledsoe*, 12 N. B. R. 402; 1 N. Y. Wkly. Dig. 101; Fed. Cas. 1538.) Parties who purchase the property and franchise of a corporation from the assignee do not thereby become its corporators and acquire the corporate entity. (*Metz, Adm'r, etc. v. Buffalo, Corry & Pittsburg R. R. Co.*, 12 N. B. R. 559.) The record of the assignment is not necessary to give force or validity to the transfer to the assignee, or for the purpose of constructive notice, but to enable the purchaser under the assignee to have in the proper county a record of his derivative title. (*Davis v. Anderson*, 6 N. B. R. 146; Fed. Cas. 3623.) A purchaser of mortgaged property, sold under a judgment of foreclosure by permission of the bankrupt court, will not be relieved from the purchase, nor can an assignee in bankruptcy of the mortgagor set aside such sale. (*Lenihan v. Hanson*, 8 N. B. R. 557.) A district court will not grant an injunction to restrain a mortgagee from prosecuting a suit in trover against the purchaser of mortgaged property sold by the assignee of the bankrupt without an order of court. (*In re Cooper*, 16 N. B. R. 178; Fed. Cas. 3190.) If the assignee make a sale of property, but refuse to deliver possession, he is liable to an action at law, if the sale has never been brought to the attention of the bankrupt court, nor acted on by it. (*Ives*

et al. v. Tregent, 14 N. B. R. 60.) Where property is purchased at an assignee's sale, which the bankrupt holds claiming homestead exemption, the validity of the sale cannot be questioned. (Steele v. Moody, 16 N. B. R. 558.) Where the bankrupt occupies premises until the conveyance is made by the assignee to a purchaser, and after the purchaser has perfected the title the bankrupt agrees to vacate on a specified day and does not do so, he holds as tenant under the purchaser and not under the assignee. (In re Hale, 19 N. B. R. 330; Fed. Cas. 5912.)

Where a wife applies for exemptions to which the trustee objects on the ground that the husband's property, including exemptions, passed to the marshal, and that he had been allowed exemptions, and action in ejectment is brought against the bankrupt, purchasers of the lands from the assignee having notice at the time the portion was set apart for the wife, and that the bankrupt husband was her tenant and that he had not been discharged, the taking of an exemption by the bankrupt defeats the wife's rights to a homestead, and the purchaser at the assignee's sale has good title as against the wife and children. (Woolfolk v. Murray, Bryan v. Sims, 10 N. B. R. 540; Fed. Cas. 18028.)

A purchaser of real estate at a foreclosure sale will not be discharged from his purchase on the ground that the title is defective by reason of proceedings in bankruptcy having been begun against the owners of the equity of redemption. (Lenihan v. Haman et al., 11 N. B. R. 471.)

*d*. Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

Upon application of parties in interest filed at any time within six months after a composition has been confirmed, the judge may set it aside and reinstate the case (sec. 13), or he may revoke a discharge at any time within one year after it was granted. (Sec. 15.)

**Composition set aside.**—An assignment to an assignee after an incomplete composition must be without prejudice to lawful acts done or titles acquired under and by virtue of such composition. (Ex parte Hamlin, 16 N. B. R. 320; 2 Lowell, 571; 5 Cent. Law J. 281; Fed. Cas. 5993.)

*e*. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date



of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

Any preference given by a bankrupt within four months before the filing of the petition and before the adjudication, where the person benefited had reasonable cause to believe it was intended as a preference, is voidable by the trustee (sec. 60, b); so is any payment to counsel except to the extent of a reasonable amount. (Sec. 60, d.) Any lien created in pursuance of suit in law or equity within four months before the filing of a petition shall be dissolved, and any conveyance, transfer, assignment or incumbrance of the bankrupt's property, with intent to defraud or delay his creditors, is null and void as against the creditors, except as to purchasers in good faith and for present consideration.

**Property that may be recovered by the assignee—Nature of action.**—Where the property in controversy at the time the debtor is adjudged bankrupt is in the actual possession of a third person claiming absolute title to the same, the question of ownership, if the same is claimed by the assignee, must be determined by a suit in equity or by an action at law, subject to re-examination as provided in the law of the place where the suit is commenced. (Knight v. Cheney, 5 N. B. R. 305; Fed. Cas. 7883.) A state court passing upon claims of an assignee is not proceeding under the Bankrupt Act, but simply recognizes that act as the source of the assignee's title, in like manner as it would if such title were derived from a contract or deed. (Cook v. Waters et al., 9 N. B. R. 155.) An action by the assignee to collect a debt due the bankrupt is not a matter of proceeding. (Kidder, Ass., v. Horrabin et al., 18 N. B. R. 146.) A district court may not proceed summarily against persons claiming title to property adverse to that of the assignee. The proceeding must be by suit at law or in equity. (In re Marter, 12 N. B. R. 185; Fed. Cas. 9143; In re Bonesteel, 8 N. B. R. 127; 7 Blatchf. 175; Fed. Cas. 1627; Rogers v. Winsor, 6 N. B. R. 246; Fed. Cas. 12023.) Where a fund in a depositary's hands is claimed absolutely by several parties, and among them by the assignee, the possession of the depositary is the possession of the claimant, if the claim be just and legal, and proceedings to recover must be by suit in law or equity. (Smith v. Mason, 6 N. B. R. 1; 14 Wall. 419.) A petition of a bankrupt's assignee to recover property from one claiming by virtue of a voluntary assignment brought in the bankruptcy court is a suit at law. (In re Krogman, 5 N. B. R. 116; Fed. Cas. 7936.) Where an assignee obtains an order of the district court requiring the bankrupt and others to deliver to him the property belonging to the bankrupt, an appeal will lie although the proceedings below be by petition. (Samson v. Blake, 6 N. B. R. 401; Fed. Cas. 12284.) A circuit court will entertain a bill by the assignee against mortgagors and other lien-holders to ascertain the amount due, and sell all the property free from incumbrances. (Sutherland et al. v. Lake Superior Ship

Canal, Railroad & Iron Co., 9 N. B. R. 298; 1 Cent. Law J. 127; Fed. Cas. 13643.)

**Assignee represents the bankrupt and also his creditors.**—An assignee represents the rights of the creditors as well as the bankrupt, and may therefore maintain or defend proceedings in regard to the property of the latter, which, on grounds of public policy or otherwise, he would not be allowed to do. (In re St. Helen's Mill Co., 10 N. B. R. 411; 8 Sawy. 88; 8 West. Jur. 597; Fed. Cas. 12222.) As the adjudication of bankruptcy is in the nature of a statute execution for all the creditors, the assignee, as their representative, may enforce against the debtor every right a judgment creditor could enforce. (Barnewall & Gaynor, Ass., v. Jones et al., 14 N. B. R. 278; Fed. Cas. 1027.) If creditors who have received from a bankrupt full payment of their debts sign an agreement with other creditors to take a certain amount on the dollar in the future, this constitutes a fraud which will give a right of action both to the debtor or creditor thereby injured, and such creditors will be liable to the assignee, who represents both the rights of the bankrupt and of creditors who have been defrauded. (Bean v. Brookmire & Rankin, 7 N. B. R. 568; 2 Dill. 108; 5 Chi. Leg. News, 314; 2 Amer. Law Rec. 222; 6 Amer. Law T. Rep. 418; 7 West. Jur. 324; Fed. Cas. 1170.)

**Limitation of actions by and against assignee.** See **SUITS BY AND AGAINST BANKRUPTS**, sec. 11.

**Recovery of fraudulent conveyances.**—The right given the assignee of recovery of property transferred by an insolvent debtor is not a penalty, but has its operation in the vesting of the title in the assignee after the transfer is declared void. (Cook v. Waters et al., 9 N. B. R. 155.) A creditor should not bring suit after proceedings in bankruptcy are begun to set aside a conveyance claimed to be void, but such suit should properly be brought by the assignee (Thurmond v. Andrews and Wife, 13 N. B. R. 157), who stands in the place of an attaching or execution creditor and may impeach the validity of a secret mortgage of his assignor. His right is stronger than the right of the bankrupt. (In re Gurney, 15 N. B. R. 373; 7 Biss. 414; 9 Chi. Leg. News, 255; 4 Law & Eq. Rep. 28; Fed. Cas. 5873.) Where a bankrupt executes a mortgage two days before his adjudication as such on his own petition, and the assignee petitions for an order that he may pay to him the proceeds thereof, the bankrupt may retain from the proceeds the sum paid counsel for preparing his petition and schedules, and an amount, to be determined by the assignee, sufficient for the support of himself and family. (In re Thompson, 13 N. B. R. 300; 2 N. Y. Wkly. Dig. 4; Fed. Cas. 13938.) He can avoid any conveyance which the creditors could avoid although made more than six months before bankruptcy. (Pratt v. Curtiss, 6 N. B. R. 139; 2 Lowell, 87; Fed. Cas. 11375.) Where a petition in bankruptcy is filed against an insolvent more than two months after executing a mortgage, but within two months of the filing of the same for record, and the state registry law provides that the mortgage is not "good in law to hold lands against

any other person than the grantor and his heirs" without record, the transaction is not complete until the instrument is recorded, and it should be set aside as against the assignee. (*Bostwick, Ass., v. Foster*, 18 N. B. R. 128; 14 Blatchf. 436; Fed. Cas. 1682.) Title to property mortgaged by a bankrupt, but in his possession at commencement of proceedings in bankruptcy, passes to his assignee, and if possession has been obtained subsequent thereto by the mortgagee, or one claiming in his right, the assignee is entitled to recovery in specie, or, if that be impossible, the value of the property when taken. (*In re Rosenberg*, 8 N. B. R. 83; 8 Ben. 866; Fed. Cas. 12055.)

In attacking a conveyance on the ground of fraud the assignee represents the rights of general creditors and may avoid the instrument, though he has no specific lien on the property. (*Cragin v. Carmichael*, 11 N. B. R. 511; 2 Dill. 519; Fed. Cas. 3819.) An assignee may maintain an action to recover the proceeds of a sale of a bankrupt's lumber made by the defendant under a chattel mortgage alleged by the assignee to be fraudulent on account of an agreement of the parties under which the mortgagor continues to sell lumber of the stock, using the proceeds in his business. (*Southard, Ass., etc. v. Benner et al.*, 19 N. B. R. 124.) Where it appears that the bankrupt fraudulently put into the hands of another money to be invested in stocks, after the adjudication of the bankrupt, at his request, the assignee is entitled to the stocks, and to a decree that such party vest in the assignee the title to the same and pay the costs of suit. (*Hyde, Ass., v. Cohen et al.*, 11 N. B. R. 461; Fed. Cas. 6967.) He can bring a suit in a United States district court, other than that in which bankruptcy proceedings are pending, to recover money alleged to have been paid in violation of the Bankrupt Act. (*Sherman v. Bingham et al.*, 7 N. B. R. 490; 3 Cliff. 552; Fed. Cas. 12762.) A debtor who pays money under an order of his creditor to a third party, with the intent thereby to enable his creditor to give a preference to such third party, will be deemed to still hold it, and the assignee may sue him for its recovery. (*Fox et al. v. Gardner*, 12 N. B. R. 187; 21 Wall. 475.) The assignee may recover damages for an injury or detention of goods by a party to whom they are transferred by the bankrupt contrary to the provisions of the Bankrupt Act, and such recovery may be had in an action to obtain possession of the property. (*Shumann, Ass., v. Fleckenstein*, 15 N. B. R. 224; 4 Sawy. 174; Fed. Cas. 12826.) Suit may be maintained by the assignee to have declared void a conveyance of all the personal property of the bankrupt, where it appears that the conveyance did not vest title in the defendant until within two months of the bankruptcy proceedings, the defendant until that time holding the property in trust to await composition proceedings. (*Haskill v. Frye, Ass.*, 14 N. B. R. 525; Fed. Cas. 6195.)

**Conveyances not fraudulent and not recoverable.**—Where a debtor executes a deed of trust which is duly delivered and recorded, and, after

condition on which the trust is to be carried out comes into operation, the trustees do not take possession of the land and carry out the trust, but allow the bankrupt to retain possession, there is no fraud, and a petition of the assignee to have the deed set aside will be denied. (In re Broome, 3 N. B. R. 90, 8 Ben. 488; Fed. Cas. 1966.) The assignee must show something more than that debts were created without notice of it before it was recorded in order to defeat a mortgage recorded before the bankruptcy proceedings were instituted. (Cragin v. Carmichael, 11 N. B. R. 511; 2 Dill 519; Fed. Cas. 8319.) An assignee will not, except upon most convincing evidence, be removed for attacking mortgages upon a bankrupt's property which he does not succeed in having set aside. (In re Sacchi, 6 N. B. R. 398; 43 How. Pr. 252; Fed. Cas. 12200.)

It was held that where one executes a chattel mortgage covering all chattels in his business establishment, and the mortgagee takes possession of the property and sells it, and the mortgagor is adjudicated a bankrupt, the assignee cannot recover the value of the property, as the mortgagee took possession before the proceedings in bankruptcy were commenced, even though the mortgage be not properly recorded. (Miller, Ass., v. Jones, 15 N. B. R. 150; Fed. Cas. 9576.)

An action of trover will not lie by an assignee against a judgment creditor to recover the value of property sold under an execution prior to the commencement of the proceedings in bankruptcy. (Carol Gates-Ass., v. American et al., 14 N. B. R. 141; Fed. Cas. 5269.) Where two deeds have been given for property, the first by a sheriff by virtue of an execution in fraud of the act, the second to a *bona fide* purchaser, for value, without notice, from the person to whom the fraudulent deed was given, the assignee has no greater rights than a judgment creditor, and though the first deed may be a cover, a *bona fide* purchaser will be protected. (Beall v. Harrell et al., 7 N. B. R. 400; Fed. Cas. 1163.) Where the plaintiff claims a judgment to be a lien upon real estate formerly owned by the bankrupt and seeks to sell it, and the assignee denies the existence of the lien and obtains an injunction enjoining the sale, the injunction will be dissolved and the creditor allowed to sell the property, the title to which may then be tried by ejectment. (Reeser v. Johnson, 10 N. B. R. 467.)

The assignee of a principal cannot recover from a creditor for money paid to the creditor by a surety, even though the surety receives the money from the principal by a preference under the act, if the creditor have no knowledge of that fact and receive the money in discharge of the obligation of the surety. (Tyler, Ass., v. Brock et al., 17 N. B. R. 239.) After satisfying valid claims, the estate of the bankrupt belongs to him, and a conveyance alleged to be fraudulent against creditors will not be set aside at the suit of the assignee, if it appear that no debts exist that are provable against the estate. (Nicholas, Ass., v. Murray, 18 N. B. R. 469; Fed. Cas. 10223.)

**Recovery of attached property.**—When at the time bankruptcy proceedings are instituted property is in the hands of the sheriff, under attachments issued out of state courts, the assignee should apply to the state and not the federal courts to obtain possession of the property. (*Johnson v. Bishop*, 8 N. B. R. 533; 21 *Pittsb. Leg. J.* 77; *Fed. Cas.* 7373.) If an injunction issue out of the circuit court under the equitable jurisdiction auxiliary to that of the district court in bankruptcy, the execution creditor may, at his election, require the assignee, as complainant, to proceed in the circuit court in equity, or invoke the summary jurisdiction of the court of bankruptcy for a decision of the question of priority. (*In re Hafer et al.*, 1 N. B. R. 163; 6 *Phila.* 474; 25 *Leg. Int.* 164; *Fed. Cas.* 5697.) Where goods are consigned by the owner, who afterward becomes bankrupt, and an attachment is issued against the goods and they are sold, an action by the assignee may be maintained in the state court for the recovery of the proceeds. (*Dambmann & White et al.*, 13 N. B. R. 438.) As title to all goods in the possession of the bankrupt at the date of filing his petition passes to the assignee, goods subsequently taken on a writ of replevin may be recovered by the assignee. (*In re Vogel*, 3 N. B. R. 49; 7 *Blatchf.* 18; 1 *Amer. Law T. Rep. Bankr.* 170; 2 *Amer. Law T.* 154; *Fed. Cas.* 16962.) His petition to have the levy of an execution on personal property of the bankrupt declared void will be granted where it appears that such levy is not in conformity with the laws of the state in which the same is made. (*Beers v. Place et al.*, 4 N. B. R. 150; 36 *Conn.* 578; 4 *Amer. Law T.* 136; 1 *Amer. Law T. Rep. Bankr.* 263; *Fed. Cas.* 1233.) A demurrer will be overruled that is filed to a bill alleging an attachment and levy upon goods which were sold by the sheriff, who holds the proceeds, the bill praying that the sheriff be enjoined from paying the proceeds to the attaching creditors, and that they be paid to the assignee. (*Pennington v. Lowenstein et al.*, 1 N. B. R. 157; *Fed. Cas.* 10938.) A subsequent judgment creditor is not a necessary party in a suit between the assignee in bankruptcy and a prior judgment creditor. (*Traders' Nat. Bank v. Campbell*, 6 N. B. R. 353; 14 *Wall.* 87.) Although a creditor secures judgment and execution upon lands of the debtor, the assignee of another creditor may secure judgment in bankruptcy against the same debtor, and under execution the same lands may be sold. (*In re Jordan*, 3 N. B. R. 45; *Fed. Cas.* 7518.)

An assignee cannot attack collaterally a sale under attachment of property in the possession of the sheriff before the filing of the petition, but should intervene and claim the property in the attachment suit. (*Valliant, Ass. v. Childress*, 11 N. B. R. 217.)

**Recovery of funds in bank, etc.**—The assignee has the right to recover from the judgment creditor, a bank, although it has given no receipt to the sheriff for moneys deposited as a result of levy, but has given only a certificate of deposit. (*Traders' Nat. Bank v. Campbell*, 6

N. B. R. 353; 14 Wall. 87.) Where a judgment creditor, a bank, makes collections for its debtor and turns them over to the sheriff, who levies on them, and the debtor becomes a bankrupt, the assignee may recover upon a suit against the creditor for the money received by the sheriff's levy, including the collections. (*Traders' Nat. Bank v. Campbell*, 6 N. B. R. 353; 14 Wall. 87.)

**Liability of stockholders to assignee.**—Stockholders are liable in bankruptcy to the assignee for their respective amounts unpaid on their stock (*Wilbur, Ass., v. Stockholders*, 18 N. B. R. 178; 13 Phila. 479; 35 Leg. Int. 346; 26 Pittsb. Leg. T. 15; Fed. Cas. 17636), and an order of the court that the amount unpaid upon the stock must be paid by a certain date is conclusive as to the assignee's right to bring the suit for any sum unpaid. (*Sanger v. Upton, Ass.*, 13 N. B. R. 226; 91 U. S. 56.) To recover the balance due on a subscription of stock, the assignee in bankruptcy of a corporation may sue at law. (*Sanger v. Upton, Ass.*, 13 N. B. R. 226; 91 U. S. 56.) He is entitled to recover against a transferee of stock, but not where the transferee does not accept the stock. (*Wilbur, Ass., v. Stockholders*, 18 N. B. R. 178; 13 Phila. 479; 35 Leg. Int. 346; 26 Pittsb. Leg. T. 15; Fed. Cas. 17636.) He has all the authority of a receiver to collect demands and pay debts, and, under the order of the court appointing him, an assessment may be made on the unpaid shares, as if the same had been ordered by the corporation before bankruptcy. (*Myers, Ass., v. Seeley et al.*, 10 N. B. R. 411; 1 Cent. Law J. 451; Fed. Cas. 9994.) The assignee of a bank may maintain a suit to recover the balance due on stock subscription from one who has assigned shares not fully paid up, and concerning some of which the transfer has not been noted on the books of the company, where a by-law provides that stock shall not be transferred by one indebted to the bank, as the transfer is not valid. (*In re Bachman*, 12 N. B. R. 223; 2 Cent. Law J. 119; 22 Int. Rev. Rec. 19; Fed. Cas. 707.) Where stockholders in a fire insurance company pay a portion in cash and give their notes for the balance of their stock, and a portion remains unpaid when the company becomes bankrupt, and the defendants purchase policies from other persons, and procure their adjustment by the company, taking certificates of loss for the amounts, which they surrender to the treasurer at par in payment of their stock-notes, suit may be maintained by the assignee of the company for the balance due upon the stock-notes. (*Jenkins, Ass., v. Armour et al.*, 14 N. B. R. 276; 6 Biss. 312; 8 Chi. Leg. News, 267; 22 Int. Rev. Rec. 169; Fed. Cas. 7260.)

**Rights of assignee with reference to partnership property.**—Where one partner is bankrupt, his assignee may recover from a solvent partner, either at law or in equity, what is due under the articles of copartnership. (*Wilkins v. Davis*, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17651.) A retiring partner may take from the assets a portion for his own use, provided that which remains is clearly ample to satisfy the

partnership obligations; but if the partnership be insolvent or the assets not more than sufficient for the payment of the partnership debts, such appropriation is fraudulent and void as to creditors. (In re Sauthoff & Olson, 16 N. B. R. 181; 8 Biss. 85; 5 Cent. Law J. 364; Fed. Cas. 12380.) Where one of the members retires from a firm but permits his name to be used, although notice of his separation is published in the newspapers, and the firm exchanges notes with one who sells for value before maturity, and the firm becomes bankrupt, the former partner is liable. (In re Krueger et al., 5 N. B. R. 489; 2 Lowell, 66; Fed. Cas. 7941.) Where partnership property is divided among several, who each agree to pay the firm debts applicable to the property taken, and one sells his interest in his property to another, and the new firm, comprising these two members, contracts debts and becomes bankrupt, preceding which property is attached for a debt due by the former firm on the property taken under the dissolution, the assignee has the right to the property attached, but it should be sold and the creditors of the second firm should be paid first. (Crane, Ass., v. Morrison et al., 17 N. B. R. 398; 4 Sawy. 138; Fed. Cas. 3355.) Where a settlement of a large amount of property upon his wife is made by a member of a firm whose nominal assets exceed the liabilities by only a small amount, and the firm is dissolved and the settler and another member form a new partnership and continue the business as if the old firm existed, furnishing no new capital, and thereafter fail, the wife dying before the failure, and the executor sells the property and loses the money in a business transaction, the settlement is invalid, and the assignee is entitled to possession of a mortgage representing a portion of the selling price, but he cannot have judgment against the estate for the balance. (Trust Co. v. Sedgewick, 18 N. B. R. 340.) Where a bankrupt is the general partner of a limited partnership, the capital of which is furnished by a special partner receiving a large per cent. of the profits and contracting to bear the losses in the same proportion, the balance devolving on the general partner, the contract providing that the special partner shall lose no more than his capital and interest thereon and the amount of profits received by him, the assignee in bankruptcy may recover the amount of profits received by him. (Wilkins v. Davis, 15 N. B. R. 60; 2 Lowell, 511; Fed. Cas. 17664.)

**Partnership property which assignee cannot recover, etc.**—An assignee of an individual partner cannot recover property transferred by a retiring partner to the bankrupt, and by him assigned to a third person. (In re Shepard, 3 N. B. R. 42; 3 Ben. 847; Fed. Cas. 12754.) Where partners, being insolvent, dissolve partnership, and on the same day convey all their property to creditors who have reasonable cause to believe that they are insolvent, and one of the former partners is subsequently adjudged bankrupt, his assignee cannot avoid the conveyance. (Forreth, Ass., v. Merritt, 3 N. B. R. 11; 1 Lowell, 336; 2 Amer. Law T. 123; 1 Amer. Law T. Rep. Bankr. 168; Fed. Cas. 4946.) Where an insolvent

firm makes a loan through an agent after its failure, and the lender, immediately after learning of the failure, makes effort to reclaim the money in the agent's hands, and before the money reaches the firm, title to it is disclaimed by a member thereof and by him placed in a bank to the credit of the lender, the title to the money does not pass from the lender, nor is the assignee of the firm entitled to recover it from the bank. (*Purviance v. Union Nat. Bank*, 8 N. B. R. 447; 30 Leg. Int. 352; 21 Pittsb. Leg. J. 83; Fed. Cas. 11475.)

**The interest of the wife in the property of the bankrupt.**—Where there has been no consummated conversion by the bankrupt of his wife's separate estate, the assignee cannot get the legal title without coming into a competent court and obtaining a decree for its conveyance to him, and such court will then decree according to the equity of the case; the same rule applies where the conversion has been consummated by fraud. (*In re Campbell*, 17 N. B. R. 4; 3 Hughes, 276; Fed. Cas. 2348.) Where the debtor conveys his farm to his wife, the deed not being recorded until seven years later, and after adjudication as bankrupt the assignee files a bill to obtain conveyance of the property to himself, most of the money paid on the farm being from proceeds of property the title to which was in the bankrupt, the property being partly paid for by the wife with money earned by herself after marriage, the farm is assets of the bankrupt. (*Keating v. Keefer*, 5 N. B. R. 133; 4 Amer. Law T. 162; 1 Amer. Law T. Rep. Bankr. 266; Fed. Cas. 7635.)

Where a bankrupt purchases articles of luxury and gives them to his wife while he is insolvent, and they are not appropriated to her individual use, and she attempts to hold them against the assignee, the bankrupt must answer the petition of the assignee, and if it appear that the wife had an adverse interest she will be entitled to have the right determined in an independent proceeding. (*In re Pierce et al.*, 15 N. B. R. 449; 7 Biss. 426; 9 Chi. Leg. News, 300; 15 Alb. Law J. 517; Fed. Cas. 11139.) Where A. loans money to B., and takes a conveyance of land, which he reconveys to B. and wife on the payment of a certain sum annually during the life of A., at whose death B. and wife should have the fee, and B. and wife (a daughter of A.) release all rights to A.'s estates, and B.'s wife dies, then A., B. becoming bankrupt, and the annual sum being paid until the death of B.'s wife, B. and wife are tenants by the entirety, and B.'s assignee is entitled to the land subject to a lien in favor of A.'s administrator for sums due from the death of B.'s wife to the death of A., with interest. (*Atwood, Ass., et al. v. Kittel et al.*, 17 N. B. R. 406; 9 Ben. 473; Fed. Cas. 641.)

**Conveyance to wife in which assignee has no title.**—Where a bankrupt, when free from debt and not contemplating bankruptcy, makes a conveyance to his wife of lands to her separate use, and reserves to himself a power of revocation and also the power to appoint to other uses, and two years later he files a petition in voluntary bankruptcy and is



adjudged bankrupt, the assignee has no title to the lands and the conveyances will be upheld. (*Jones, Ass., v. Clifton*, 18 N. B. R. 125; 17 Amer. Law Reg. (N. S.) 718; 6 Reporter, 324; 7 Cent. Law J. 522; Fed. Cas. 7458.) Where an assignee applies to have property of a wife delivered to him as assignee of her bankrupt husband, alleging, but submitting no proof, that she holds the property in her name as cloak against her husband's creditors, the application will be denied. (*In re Driggs, Ass., v. Russell*, 8 N. B. R. 39; 1 Chi. Leg. News, 358; 2 Amer. Law T. 206; 1 Amer. Law T. Rep. Bankr. 160; Fed. Cas. 4084.)

**Assignee's right to sue for money paid as usury.**—An assignee in bankruptcy may sue for money paid as usury by the bankrupt. (*Wheelock v. Lee*, 10 N. B. R. 368; *Wheelock, Ass., etc. v. Lee*, 17 N. B. R. 563.) He may maintain an action to recover double the amount of usurious interest paid by the bankrupt, although the defendant demur on the ground that he has no legal capacity to prosecute the action, as the claim is one which passes to him. (*Wright, etc. v. Bank*, 18 N. B. R. 87; 18 Alb. Law T. 115; 10 Chi. Leg. News, 348; 26 Pittsb. Leg. T. 11; Fed. Cas. 18078.)

The collaterals given by the bankrupt for a usurious loan cannot be recovered by the assignee unless he tender the amount actually loaned to the bankrupt. (*Wheelock, Ass., v. Lee*, 17 N. B. R. 563.) Where the charter of a bank prohibits it from taking greater than a specified rate of interest, but is silent as to the penalty if more than the charter rate be contracted for, the effect is not to render the whole note void, but only the excess beyond the legal rate, and if such a note be voluntarily paid, neither the borrower nor his assignee can recover the principal sum or anything more than the excess beyond the legal rate of interest, and equity will entertain a bill to recover such excess. (*Darby v. Boatman Sav. Inst.*, 4 N. B. R. 195; 8 Chi. Leg. News, 249; 4 Amer. Law T. 117; 1 Leg. Op. 251; Fed. Cas. 3571.)

**Transfer of stock.**—Where a person, being indebted to a bank in which he owns stock, executes an irrevocable power of attorney to the cashier to transfer such stock, with power to appoint a substitute, and afterward becomes bankrupt and the cashier dies, the power is not revoked, and the stock will not, upon suit brought, be delivered to the assignee (*Lightner, Ass., v. Bank*, 15 N. B. R. 69); nor where one broker purchases from another shares of stock, the transfer and payment to be made the next day, and payment is duly made but the stock is not transferred, and thereupon the vendor fails, but gives a certificate of certain of the shares with power of attorney to make the transfer and procure the transfer of the remainder, at the request of the vendee, who knows of the failure. (*Sparhawk et al., Ass., v. Richards et al.*, 12 N. B. R. 74; 1 Wkly. Notes Cas. 510; Fed. Cas. 13205.) Where a bankrupt holds shares in a bank, on which the bank claims a lien under its by-laws, as security for a debt of the bankrupt, and refuses to give the

certificate of stock to the assignee, the latter cannot maintain an action to recover the value of the same, alleging that the by-law is void, as the bank cannot hold the title, and a judgment for conversion would vest the title in the bank. (*Meyers, Ass., v. Bank*, 18 N. B. R. 34; *Fed. Cas.* 9519.) The assignee of one creditor of a corporation cannot maintain an action against one stockholder to recover the full amount of his debt, without regard to the other creditors or the ability of the other stockholders to respond, where the charter provides that stockholders are "bound respectively for all the debts of the bank in proportion to their stock holden therein." (*Pollard v. Bailey, Ass.*, 11 N. B. R. 276; 20 Wall. 520.) Where a bank buys some of its own stock, and because it has no right to hold the stock in its own name parcels it out among the directors, one of them giving his note for some of the stock, which is transferred to him on the books, he receiving the dividends and the bank retaining the certificate, and the director becomes insolvent and transfers the stock to the bank's teller, and the bank retains the note as an asset, the assignee cannot maintain an action to set aside the transfer as a preference. The bankrupt is not the owner of the shares, as the bank had no stock to convey. (*Meyers, Ass., v. Bank*, 18 N. B. R. 34; *Fed. Cas.* 9519.)

**Commercial paper.**—An indorser of a note who receives none of the proceeds of the same, and whose contingent liability never becomes absolute, cannot be compelled to pay the bankrupt's assignee the amount of the note paid by the bankrupt to the holder and while the debtor was carrying on the business. (*Bean, Ass., v. Laffin*, 5 N. B. R. 333; *Fed. Cas.* 1172.) Where a university undertakes to raise an endowment fund, and one afterward bankrupt subscribes and gives his note, his assignee cannot maintain an action to have the amount due on the subscription set aside. (*Sturgis, Ass., v. Colby et al.*, 18 N. B. R. 168; *Fed. Cas.* 13574.)

**Set-off.**—Where, in making proof of a claim, a creditor does not show that the bankrupt held an unsatisfied claim against him, and the assignee brings suit on the claim and pleads the amount allowed on his proof as a set-off, he is not entitled thereto. (*Russell, Ass., v. Owen*, 15 N. B. R. 322.) See also SET-OFF, sec. 68.

**Receivers under state courts.**—A state court having appointed a receiver on a creditor's bill prior to the commencement of the proceedings in bankruptcy, it will not, on a mere motion, direct the delivery of the property to the assignee (*Freeman et al., Trustees, v. Fort et al.*, 14 N. B. R. 46); and it was held, under the act of 1867, that an action cannot be maintained in a United States court in behalf of the assignee in bankruptcy, to compel such receiver to deliver up the property to the assignee. (*Meyer et al. v. Preserving Works*, 14 N. B. R. 9.) Where one partner brings an action in a state court against the other for a settlement, and the court appoints receivers, who take possession of the firm's property, and the firm is subsequently adjudged bankrupt, an assignee

being appointed, who makes application for an order directing the marshal to take possession of the joint property in the hands of the receivers, the bankrupt court will not interfere with the possession of the receivers. (In re Clark & Bininger, 3 N. B. R. 180; 4 Ben. 88; Fed. Cas. 2798.)

**Where assignee may recover in general.**—The assignee may sue on a written contract entered into between the bankrupt and another to recover a debt alleged to be due the bankrupt thereunder. (Babbit v. Burgess, 7 N. B. R. 561; 2 Dill. 169; 5 Chi. Leg. News, 326; Fed. Cas. 693.) Where an assignee has filed a bill in equity to redeem real estate, a subsequent incumbrancer cannot redeem and acquire complete title. (In re Longfellow, 17 N. B. R. 27; 2 Hask. 231; Fed. Cas. 8486.) Where, on a suit on a mortgage by the assignee of the mortgagee, the defendant pleads an executory contract with the mortgagor by the terms of which the mortgage, held as collateral security by a third party, should be redeemed and satisfied, and the assignee redeems the mortgage, it is an asset in his hands for the benefit of creditors. (McLean et al. v. Cadwalader, 15 N. B. R. 863.) Where a bankrupt owns a license to occupy stalls in a market, which license is revocable at the will of the city, and its assignment gives the assignee no rights unless consented to by the city, the license passes to the assignee, and a motion to compel the bankrupt to transfer it will be granted. (In re Gallagher et al., 19 N. B. R. 224; Fed. Cas. 5197.) Where a bankrupt has failed to put property in his schedule, the right of the assignee to recover it is not barred by a discharge granted before discovery. (Maybin v. Raymond, Ass., 15 N. B. R. 358; 4 Amer. Law T. Rep. (U. S.) 21; Fed. Cas. 9838.) Where one engages counsel to bring suit upon an insurance policy, assigning the same to the counsel as security for fees, and after suit is brought becomes bankrupt and the counsel compromises the suit, an entry of dismissal being made, the assignee may at a subsequent term have the case reinstated. (Home Insurance Co. v. Hollis, Ass., 14 N. B. R. 337.) Where, before filing a voluntary petition, the debtor assigns a number of claims to his attorneys and pays them for services rendered and to be rendered in the bankruptcy proceedings, and the attorneys collect some of the claims, and the assignee sues for the money and claims, alleging that the transfer is void, the matter is not a proper one for compromise on the part of the assignee. (In re Rowe et al., 18 N. B. R. 428; Fed. Cas. 12092.) Where a sale of property void under a state statute of frauds is sought to be set aside by the assignee of the vendor, a bankrupt court should follow the construction of the state court, and a sale void by the terms of the state statute is also void under the Bankrupt Act. (Massey et al. v. Allen, 7 N. B. R. 401; 17 Wall. 351.) Where an order of seizure is given against goods in the hands of a purchaser from a bankrupt, and upon giving bond with securities the goods are returned to the purchaser, and in proceedings to set aside the sale a decree is made declaring the sale fraudulent, and the purchaser prosecutes unsuccessful appeals, exe-

cuting bonds with different sureties, and execution issues against the purchaser and part of the sum due under decree is paid, the assignee may proceed by summary motion or petition against the sureties on the original bond for the balance due and need not resort to plenary suit on the bond. (*Stores et al. v. Engel et al.*, 19 N. B. R. 90; 3 Hughes, 414; Fed. Cas. 13494.)

If a party, taking a bill of sale as security, deliberately proves a debt which assumes that he is the absolute owner of the goods, and persists in such false claim in an action by the assignee to recover the goods, and attempts to support it by his own oath, he is estopped from claiming them as security. (*Willis v. Carpenter et al.*, 14 N. B. R. 521; Fed. Cas. 17770.)

**Bona fide holders for value.**—The filing of the petition praying the adjudication in bankruptcy is notice to all the world and all persons dealing with the person so charged to do so at their peril. A purchaser of negotiable paper, after such filing, is not a *bona fide* holder without notice. (*In re Lake*, 6 N. B. R. 542; 6 West. Jur. 360; 3 Biss. 204; 4 Chi. Leg. News, 281; Fed. Cas. 7992.) The purchasers from a first vendor must, in order to invalidate their title, be affected by notice of or participation in the original fraud; that is, must have been purchasers without valuable consideration or *mala fide*. (*Babbitt v. Walbrun & Co.*, 6 N. B. R. 859; Fed. Cas. 695.) A purchaser with notice, who acquires his title from a purchaser who formerly acquired the property by fraud, takes no better title than his vendor had. (*Harrell v. Beall, Ass.*, 9 N. B. R. 49; 17 Wall. 590.) The claim of an assignee duly appointed will prevail against the debtor who has made a payment to his creditor after the filing of the petition, notwithstanding it was made *bona fide* and without knowledge of the bankruptcy proceedings. (Opinion of Attorney-General, 9 N. B. R. 117.)

**Where assignee may not recover.**—Where a contract is terminated by default of the purchaser, the seller being ready to perform it, an action will not lie by the purchaser or by his assignee to recover the part of the purchase-money paid previous to the default. (*Kane, Ass., v. Jenkinson*, 10 N. B. R. 316; Fed. Cas. 7607.) Where one contracts to sell grain on the market with reference to the future, and the purchaser contracts to deliver the grain to a third person, part of which he does, and part of which he settles for without delivery according to custom, and the first seller gives notes and mortgages to adjust the differences between him and his purchaser and becomes bankrupt, his assignee cannot maintain an action to have the mortgages and notes set aside as wagering contracts. (*Clark, Ass., v. Foss et al.*, 17 N. B. R. 261.)

Where, prior to bankruptcy, a bankrupt issues warehouse receipts, the assignee is estopped to deny the validity of the receipts. (*Sharpe, Ass., v. Warehouse Co.*, 19 N. B. R. 378.) Where numerous bonds are held by the bailee in escrow for a corporation which becomes bankrupt after having sold and received payment for some of the bonds, and the as-

signee claims the bonds as against the vendee, the latter is entitled to them, the bonds being all alike. (*Hamilton, Ass., v. Bank*, 18 N. B. R. 97; 8 Dill. 230; Fed. Cas. 5987.)

Where an insurance firm secures a loan for the bankrupt and he leaves a portion of the money in the firm's hands to pay premiums of insurance to be taken in the company which the firm represents, the money being left and the insurance being procured as a compensation for obtaining the loan, and half the amount is furnished and half the fund is applied to the payment of a premium, the assignee cannot upon action brought recover the balance of the fund, as the firm has a vested interest therein. (*Newcomb v. Launtz, Ass.*, 18 N. B. R. 274.)

Where a merchant, who afterwards becomes bankrupt, buys goods when insolvent without any intention to pay for them, and fraudulently conceals his insolvency, and the vendor retakes possession of the goods and the merchant is adjudicated bankrupt, it was held that his assignee could not maintain an action to recover the value of the goods. (*Donaldson, Ass., v. Farwell et al.*, 15 N. B. R. 277.)

Where delivery of exclusive possession of goods accompanies an absolute or conditional sale, a reservation of a lien or right of property in the vendor will not protect the goods from the vendee's creditors, and the assignee cannot, in an action brought, recover the value of the goods. (*Enwer, Ass., v. Van Giessen et al.*, 19 N. B. R. 263.)

*f.* Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revert in him.

A certified copy of an order confirming a composition constitutes evidence of the revesting of the title of his property in the bankrupt, and if recorded imparts the same notice that a deed from the trustee to the bankrupt, if recorded, would impart. (Sec. 21, *g.*) The composition must be confirmed if the judge be satisfied it is for the best interests of the creditors, that the bankrupt has not been guilty of any act which would be a bar to his discharge, and that the offer and its acceptance are made in good faith. (Sec. 12, *d.*)

**Confirmation of composition.**—The right of a party to the use of an alley, reserved to him so long as he should continue to own an adjoining piece of land, is not terminated by bankruptcy proceedings which are afterwards arranged, the land being reconveyed by the assignee. (*Collie v. Jamison*, 18 N. B. R. 1.) Where, in accordance with the terms of a composition, the assignee reconveys the land in question to the judgment debtor, the receiver appointed by the court in which the judgment was rendered has no claim upon the rents and profits of the land, it being the after-acquired property of the judgment debtor. (*Conover et al. v. Dumabaut et al.*, 17 N. B. R. 558.) Where a composition is effected pro-

viding that upon payment of the composition notes the property of the bankrupt, in the possession of an assignee under a voluntary assignment for benefit of creditors, executed before petition in bankruptcy was filed, should be restored to the debtor, and payment of the composition is made, the bankruptcy court has no power to determine questions of title between the debtor and persons not parties to the proceedings. (In re Waitzfelder et al., 18 N. B. R. 260; Fed. Cas. 17048.) Where, after the appointment of an assignee, a composition is accepted and confirmed, creditors cease to have any interest in the estate, and it is the duty of the assignee to pay the balance in his hands to the bankrupt. (In re August et al., 19 N. B. R. 161; Fed. Cas. 645.)

**Interpretation of bankrupt law.**—The national bankruptcy law should be interpreted reasonably and according to a fair import of its terms, with a view to effect its objects and to promote justice. (Blake et al. v. F. Valentine Co., 89 Fed. Rep. 691.)

#### THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

*a.* This Act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

[Act of 1867. SEC. 50. . . . That this act shall commence and take effect as to the appointment of the officers created hereby, and the promulgation of rules and general orders, from and after the date of its approval: *Provided,* That no petition or other proceeding under this act shall be filed, received, or commenced before the first day of June, Anno Domini, eighteen hundred and sixty-seven.]

*b.* Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.

**Supremacy of federal law.**—When a Congress has exercised its constitutional power to establish uniform laws on the subject of bankruptcy, the law passed under such power is paramount and exclusive and supersedes and suspends all state insolvent laws, at least until its repeal. (In re Langley, 1 N. B. R. 155; Van Nostrand v. Barr, 2 N. B. R. 154; Thornhill v. Bank of Louisiana, 5 N. B. R. 367; 1 Woods, 1; Fed. Cas. 13992; In re Merchants' Ins. Co., 6 N. B. R. 43; 3 Biss. 163; 20 Pittsb. Leg. J. 32; 4 Chi. Leg. News, 73; Fed. Cas. 9441; In re Independent Ins. Co., 6 N. B. R. 260; Holmes, 103; Fed. Cas. 7017; In re Safe Deposit and Savings Institution, 7 N. B. R. 392; Fed. Cas. 12211; In re Citizens' Savings Bank, 9

N. B. R. 152; Fed. Cas. 2735; *In re Shryock et al., Ass., v. Bashore*, 18 N. B. R. 481; Fed. Cas. 12820. *Contra*, *Sedgwick v. Place*, 1 N. B. R. 204; 84 Conn. 553; Fed. Cas. 12622; *Malthie v. Hotchkiss*, 5 N. B. R. 485, *Chandler et al. v. Siddie*, 10 N. B. R. 286; 1 Cent. Law J. 341; Fed. Cas. 2594.)

**Extent of such supremacy.**—The passage of a bankrupt law for the United States suspends the state insolvent law in force at the time of its passage, in so far as the provisions of the bankrupt law cover the subjects-matter of the provisions of the state insolvent laws. (*In re Reynolds*, 9 N. B. R. 50; Fed. Cas. 11723.)

**Does not supersede.**—A state law “to prevent fraudulent assignments in trust for creditors and other fraudulent conveyances” is not an insolvent law, and is not superseded by the federal bankrupt law. (*Ebersole & McCarty v. Adams, etc.*, 18 N. B. R. 141.)

**Effect of repeal.**—When a Bankrupt Act is repealed, the state insolvent laws are again in full force and need not be re-enacted. (*Lavender v. Gosnell et al.*, 12 N. B. R. 282.)

**Effect on pending proceedings.**—The adoption of a bankrupt law does not divest the state courts of jurisdiction over insolvent proceedings pending at the time of its adoption. (*Lavender v. Gosnell & Tripp*, 12 N. B. R. 282.)

**Effect of prior acquired jurisdiction of state court.**—The fact that a state court has taken possession of the property of an insolvent cannot defeat the execution of the bankrupt law. (*In re Safe Deposit and Savings Institution*, 7 N. B. R. 392; Fed. Cas. 12311.)

**Common-law assignment.**—A common-law assignment is not rendered void by the existence of a bankrupt law, *ipso facto*, and is therefore good against a judgment creditor who attempts to enforce his judgment by garnishee process against the assignee. (*Cook et al. v. Rogers, etc.*, 18 N. B. R. 97.)

**Winding up affairs of insolvent corporation.**—Although the law under which a state court undertook to collect and distribute the assets of an insolvent corporation did not provide for discharging, or purport to discharge, the debtor from its liabilities, such proceedings are in contravention of bankruptcy law. (*In re Merchants' Ins. Co.*, 6 N. B. R. 48; 8 Biss. 163; 20 Pittsb. Leg. J. 83; 4 Chi. Leg. News, 73; Fed. Cas. 2441.)

See also generally, *ante*, pp. 8-10, §§ 11 and 22.





### TITLE III.

## THE NATIONAL BANKRUPTCY LAW OF 1867 AND AMENDMENTS.

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AN ACT to establish a uniform System of Bankruptcy throughout the United States.<sup>1</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the several District Courts of the United States be, and they hereby are, constituted courts of bankruptcy, and they shall have original jurisdiction in their respective districts in all matters and proceedings in bankruptcy, and they are hereby authorized to hear and adjudicate upon the same according to the provisions of this act. The said courts shall be always open for the transaction of business under this act, and the powers and jurisdiction hereby granted and conferred shall be exercised as well in vacation as in term time, and a judge sitting at chambers shall have the same powers and jurisdiction, including the power of keeping order and of punishing any contempt of his authority, as when sitting in court. And the jurisdiction hereby conferred shall extend to all cases and controversies arising between the bankrupt and any creditor or creditors who shall claim any debt or demand under the bankruptcy; to the collection of all the assets of the bankrupt; to the ascertainment and liquidation of the liens and other specific claims thereon; to the adjustment of the various priorities and conflicting interests of all

<sup>1</sup> This act, together with the act of June 23, 1874, and all acts in amendment or supplementary thereto or in explanation thereof, were repealed by the act of June 7, 1878, to take effect September 1, 1878 (20 St. L. 99).

parties; and to the marshalling and disposition of the different funds and assets, so as to secure the rights of all parties and due distribution of the assets among all the creditors; and to all acts, matters, and things to be done under and in virtue of the bankruptcy, until the final distribution and settlement of the estate of the bankrupt, and the close of the proceedings in bankruptcy. The said courts shall have full authority to compel obedience to all orders and decrees passed by them in bankruptcy, by process of contempt and other remedial process, to the same extent that the circuit courts now have in any suit pending therein in equity. Said courts may sit, for the transaction of business in bankruptcy, at any place in the district, of which place and the time of holding court they shall have given notice, as well as at the places designated by law for holding such courts.<sup>1</sup>

SEC. 2. *And be it further enacted*, That the several circuit courts of the United States, within and for the districts where the proceedings in bankruptcy shall be pending, shall have a general superintendence and jurisdiction of all cases and questions arising under this act; and, except when special provision is otherwise made, may, upon bill, petition, or other proper process, of any party aggrieved, hear and determine the case in a court of equity. The powers and jurisdiction hereby granted may be exercised either by said court or by any justice thereof in term time or vacation. Said circuit courts shall also have concurrent jurisdiction with the district courts of the<sup>2</sup> same district of all suits at law or in equity which may or shall be brought by the assignee in bankruptcy against any person claiming an adverse inter-

<sup>1</sup> The act of June 22, 1874 (18 St. L. 178, § 2), amends this section by adding thereto the following words: "Provided, That the court having charge of the estate of any bankrupt may direct that any of the legal assets or debts of the bankrupt, as contradistinguished from equitable demands, shall, when such

debt does not exceed five hundred dollars, be collected in the courts of the State where such bankrupt resides having jurisdiction of claims of such nature and amount."

<sup>2</sup> Section 3 of the above act of 1874 inserts the word "any" in lieu of the word "same."

est,<sup>1</sup> or by such person against such assignee, touching any property or rights of property of said bankrupt transferable to or vested in such assignee; but no suit at law or in equity shall in any case be maintainable by or against such assignee, or by or against any person claiming an adverse interest, touching the property and rights of property aforesaid, in any court whatsoever, unless the same shall be brought within two years from the time the cause of action accrued, for or against such assignee: *Provided*, That nothing herein contained shall revive a right of action barred at the time such assignee is appointed.

OF THE ADMINISTRATION OF THE LAW IN COURTS OF BANKRUPTCY.

SEC. 3. *And be it further enacted*, That it shall be the duty of the judges of the district courts of the United States, within and for the several districts, to appoint in each Congressional district in said districts, upon the nomination and recommendation of the Chief Justice of the Supreme Court of the United States, one or more registers in bankruptcy, to assist the judge of the district court in the performance of his duties under this act. No person shall be eligible to such appointment unless he be a counsellor of said court, or of some one of the courts of record of the state in which he resides. Before entering upon the duties of his office, every person so appointed a register in bankruptcy shall give a bond to the United States, with condition that he will faithfully discharge the duties of his office, in a sum not less than one thousand dollars, to be fixed by said court, with sureties satisfactory to said court, or to either of the said justices thereof; and he shall, in open court, take and subscribe the oath prescribed in the act entitled "An act to prescribe an oath of office, and for other purposes," approved July second, eighteen hundred and sixty-two, and also that he will not,

<sup>1</sup>Section 8 of the act of June 22, words, "or owing any debt to such 1874 (18 St. L. 178), here adds the bankrupt."

during his continuance in office, be, directly or indirectly, interested in or benefited by the fees or emoluments arising from any suit or matter pending in bankruptcy, in either the district or circuit court in his district.

SEC. 4.<sup>1</sup> *And be it further enacted*, That every register in bankruptcy, so appointed and qualified, shall have power, and it shall be his duty, to make adjudication of bankruptcy, to receive the surrender of any bankrupt, to administer oaths in all proceedings before him, to hold and preside at meetings of creditors, to take proof of debts, to make all computations of dividends, and all orders of distribution, and to furnish the assignee with a certified copy of such orders, and of the schedules of creditors and assets filed in each case, to audit and pass accounts of assignees, to grant protection, to pass the last examination of any bankrupt in cases whenever the assignee or a creditor do not oppose, and to sit in chambers and dispatch there such part of the administrative business of the court and such uncontested matters as shall be defined in general rules and orders, or as the district judge shall in any particular matter direct; and he shall also make short memoranda of his proceedings in each case in which he shall act, in a docket to be kept by him for that purpose, and he shall forthwith, as the proceedings are taken, forward to the clerk of the district court a certified copy of said memoranda, which shall be entered by said clerk in the proper minute-book to be kept in his office, and any register of the court may act for any other register thereof: *Provided, however*, That nothing in this section contained shall empower a register to commit for contempt, or to hear a disputed adjudication, or any question of the allowance or suspension of an order of discharge; but in all matters where an issue of fact or of law is raised and contested by any party to the proceedings before him, it shall be his duty to cause the question or issue to be stated by the opposing parties in writing,

<sup>1</sup>The act of June 22, 1874 (18 St. court of the business transacted by L. 185, § 19), requires the register to him.  
make a report to the clerk of the

and he shall adjourn the same into court for decision by the judge.<sup>1</sup> No register shall be of counsel or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, nor in an appeal therefrom; nor shall he be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy, nor be interested in the fees or emoluments arising from either of said trusts. The fees of said registers, as established by this act, and by the general rules and orders required to be framed under it, shall be paid to them by the parties for whom the services may be rendered in the course of proceedings authorized by this act.

SEC. 5. *And be it further enacted*, That the judge of the district court may direct a register to attend at any place within the district for the purpose of hearing such voluntary applications under this act as may not be opposed, of attending any meeting of creditors, or receiving any proof of debts, and, generally, for the prosecution of any bankruptcy or other proceedings under this act; and the travelling and incidental expenses of such register, and of any clerk or other officer attending him, incurred in so acting, shall be set[tled] by said court in accordance with the rules prescribed under the tenth section of this act, and paid out of the assets of the estate in respect of which such register has so acted; or, if there be no such assets, or if the assets shall be insufficient,

<sup>1</sup>The act of June 23, 1874 (18 St. L. 184, § 18), makes the following amendment: And no register or clerk of court, or any partner or clerk of such register or clerk of court, or any person having any interest with either in any fees or emoluments in bankruptcy, or with whom such register or clerk of court shall have any interest in respect to any matter in bankruptcy, shall be of counsel, solicitor, or attorney, either in or out of court, in any suit or matter pending in bankruptcy in either the circuit or district court of his district, or in an appeal therefrom. Nor shall they, or either of them, be executor, administrator, guardian, commissioner, appraiser, divider, or assignee of or upon any estate within the jurisdiction of either of said courts of bankruptcy; nor be interested, directly or indirectly, in the fees or emoluments arising from either of said trusts.

then such expenses shall form a part of the costs in the case or cases in which the register shall have acted in such journey, to be apportioned by the judge, and such register, so acting, shall have and exercise all powers, except the power of commitment, vested in the district court for the summoning and examination of persons or witnesses, and for requiring the production of books, papers and documents: *Provided, always,* That all depositions of persons and witnesses taken before said register, and all acts done by him, shall be reduced to writing, and be signed by him, and shall be filed in the clerk's office as part of the proceedings. Such register shall be subject to removal by the judge of the district court, and all vacancies occurring by such removal, or by resignation, change of residence, death or disability, shall be promptly filled by other fit persons, unless said court shall deem the continuance of the particular office unnecessary.

SEC. 6. *And be it further enacted,* That any party shall, during the proceedings before a register, be at liberty to take the opinion of the district judge upon any point or matter arising in the course of such proceedings, or upon the result of such proceedings, which shall be stated by the register in the shape of a short certificate to the judge, who shall sign the same if he approve thereof; and such certificate, so signed, shall be binding on all the parties to the proceeding; but every such certificate may be discharged or varied by the judge at chambers or in open court. In any bankruptcy, or in any other proceedings within the jurisdiction of the court, under this act, the parties concerned, or submitting to such jurisdiction, may at any stage of the proceedings, by consent, state any question or questions in a special case for the opinion of the court, and the judgment of the court shall be final unless it be agreed and stated in such special case that either party may appeal, if, in such case, an appeal is allowed by this act. The parties may also, if they think fit, agree, that upon the question or questions raised by such special case being finally decided, a sum of money, fixed by the parties, or to be ascertained by the

court, or in such manner as the court may direct, or any property, or the amount of any disputed debt or claim, shall be paid, delivered or transferred by one of such parties to the other of them either with or without costs.

SEC. 7. *And be it further enacted*, That parties and witnesses summoned before a register shall be bound to attend in pursuance of such summons at the place and time designated therein, and shall be entitled to protection, and be liable to process of contempt in like manner as parties and witnesses are now liable thereto in case of default in attendance under any writ of subpoena, and all persons wilfully and corruptly swearing or affirming falsely before a register shall be liable to all the penalties, punishments, and consequences of perjury. If any person examined before a register shall refuse or decline to answer, or to swear to or sign his examination when taken, the register shall refer the matter to the judge, who shall have power to order the person so acting to pay the costs thereby occasioned, if such person be compellable by law to answer such question or to sign such examination, and such person shall also be liable to be punished for contempt.

#### OF APPEALS AND PRACTICE.

SEC. 8. *And be it further enacted*, That appeals may be taken from the district to the circuit courts in all cases of equity, and writs of error may be allowed to said circuit courts from said district courts in cases at law under the jurisdiction created by this act, when the debt or damages claimed amount to more than five hundred dollars, and any supposed creditor, whose claim is wholly or in part rejected, or an assignee who is dissatisfied with the allowance of a claim may appeal from the decision of the district court to the circuit court from the same district; but no appeal shall be allowed in any case from the district to the circuit court unless it is claimed, and notice given thereof to the clerk of the district court, to be entered with the record of the pro-

ceedings, and also to the assignee or creditor, as the case may be, or to the defeated party in equity, within ten days after the entry of the decree or decision appealed from. The appeal shall be entered at the term of the circuit court which shall be first held within and for the district next after the expiration of ten days from the time of claiming the same. But if the appellant in writing waives his appeal before any decision thereon, proceedings may be had in the district court as if no appeal had been taken; and no appeal shall be allowed unless the appellant at the time of claiming the same shall give bond in man[ner] now required by law in cases of such appeals. No writ of error shall be allowed unless the party claiming it shall comply with the statutes regulating the granting of such writs.

SEC. 9. *And be it further enacted*, That in cases arising under this act no appeal or writ of error shall be allowed in any case from the circuit courts to the Supreme Court of the United States, unless the matter in dispute in such case shall exceed two thousand dollars.

SEC. 10. *And be it further enacted*, That the Justices of the Supreme Court of the United States, subject to the provisions of this act, shall frame general orders for the following purposes:

For regulating the practice and procedure of the district courts in bankruptcy, and the several forms of petitions, orders, and other proceedings to be used in said courts in all matters under this act;

For regulating the duties of the various officers of said courts;

For regulating the fees<sup>1</sup> payable and the charges and costs to be allowed, except such<sup>2</sup> as are established by this act or by law, with respect to all proceedings in bankruptcy before said courts, not exceeding the rate of fees now allowed by law for similar services in other proceedings;

<sup>1</sup> See note 1 to sec. 47.

cept such as are established by this

<sup>2</sup> The act of June 22, 1874 (18 St. L. 184, § 18), repeals the words "ex-  
act or by law."



For regulating the practice and procedure upon appeals;  
For regulating the filing, custody, and inspection of records;

And generally for carrying the provisions of this act into effect.

After such general orders shall have been so framed, they or any of them may be rescinded or varied, and other general orders may be framed in manner aforesaid; and all such general orders so framed shall from time to time be reported to Congress, with such suggestions as said justices may think proper.

#### VOLUNTARY BANKRUPTCY — COMMENCEMENT OF PROCEEDINGS.

SEC. 11. *And be it further enacted*, That if any person residing within the jurisdiction of the United States, owing debts provable under this act exceeding the amount of three hundred dollars, shall apply by petition addressed to the judge of the judicial district in which such debtor has resided or carried on business for the six months next immediately preceding the time of filing of such petition, or for the longest period during such six months, setting forth his place of residence, his inability to pay all his debts in full, his willingness to surrender all his estate and effects for the benefit of his creditors and his desire to obtain the benefit of this act, and shall annex to his petition a schedule, verified by oath before the court or before a register in bankruptcy, or before one of the commissioners of the circuit court of the United States, containing a full and true statement of all his debts, and, as far as possible, to whom due, with the place of residence of each creditor, if known to the debtor, and if not known the fact to be so stated, and the sum due to each creditor; also, the nature of each debt or demand, whether founded on written security, obligation, contract, or otherwise, and also the true cause and consideration of such indebtedness in each case, and the place where such indebtedness accrued, and a statement of any existing mort-

gage, pledge, lien, judgment, or collateral or other security given for the payment of the same; and shall also annex to his petition an accurate inventory,<sup>1</sup> verified in like manner, of all his estate, both real and personal, assignable under this act, describing the same and stating where it is situated, and whether there are any, and if so, what encumbrances thereon, the filing of such petition shall be an act of bankruptcy, and such petitioner shall be adjudged a bankrupt: *Provided*, That all citizens of the United States petitioning to be declared bankrupt shall on filing such petition, and before any proceedings thereon, take and subscribe an oath of allegiance and fidelity to the United States, which oath shall be filed and recorded with the proceedings in bankruptcy. And the judge of the district court, or, if there be no opposing party, any register of said court, to be designated by the judge, shall forthwith, if he be satisfied that the debts due from the petitioner exceed three hundred dollars, issue a warrant, to be signed by such judge or register, directed to the<sup>2</sup> marshal of said district, authorizing him forthwith, as messenger, to publish notices in such newspapers as the warrant specifies;<sup>3</sup> to serve written or printed notice, by mail or personally, on all creditors upon the schedule filed with the debtor's petition, or whose names may be given to him in addition by the debtor, and to give such personal or other

<sup>1</sup> The act of June 22, 1874 (18 Stat. L. 182, § 15), adds the words "and valuation" after the word "inventory."

<sup>2</sup> The act of 1874, above, § 19, provides for the making of a report by the marshal to the clerk.

<sup>3</sup> Section 5 of the act of 1874, above referred to, makes the following amendment: That section 11 of said act be amended by striking out the words "as the warrant specifies," where they first occur, and inserting the words "as the marshal shall select, not exceeding

two;" and inserting after the word "specifies," where it last occurs, the words "but whenever the creditors of the bankrupt are so numerous as to make any notice now required by law to them, by mail or otherwise, a great and disproportionate expense to the estate, the court may, in lieu thereof, in its discretion, order such notice to be given by publication in a newspaper or newspapers, to all such creditors whose claims, as reported, do not exceed the sums, respectively, of fifty dollars."

notice to any persons concerned as the warrant specifies, which notice shall state:—

First. That a warrant in bankruptcy has been issued against the estate of the debtor.

Second. That the payment of any debts and the delivery of any property belonging to such debtor to him or for his use, and the transfer of any property by him, are forbidden by law.

Third. That a meeting of the creditors of the debtor, giving the names, residences, and amounts, so far as known, to prove their debts and choose one or more assignees of his estate, will be held at a court of bankruptcy, to be holden at a time and place designated in the warrant, not less than ten nor more than ninety days after the issuing of the same.

#### OF ASSIGNMENTS AND ASSIGNEES.

SEC. 12. *And be it further enacted*, That at the meeting held in pursuance of the notice, one of the registers of the court shall preside, and the messenger shall make return of the warrant and of his doings thereon; and if it appears that the notice to the creditors has not been given as required in the warrant, the meeting shall forthwith be adjourned, and a new notice given as required. If the debtor dies after the issuing of the warrant, the proceedings may be continued and concluded in like manner as if he had lived.

SEC. 13. *And be it further enacted*, That the creditors shall, at the first meeting held after due notice from the messenger, in presence of a register designated by the court, choose one or more assignees of the estate of the debtor; the choice to be made by the greater part in value and in number of the creditors who have proved their debts. If no choice is made by the creditors at said meeting, the judge, or if there be no opposing interest, the register, shall appoint one or more assignees. If an assignee, so chosen or appointed, fails within five days to express in writing his acceptance of the trust, the judge or register may fill the vacancy. All

elections or appointments of assignees shall be subject to the approval of the judge; and when in his judgment it is for any cause needful or expedient, he may appoint additional assignees, or order a new election. The judge at any time may, and upon the request in writing of any creditor who has proved his claim shall, require the assignee to give good and sufficient bond to the United States, with a condition for the faithful performance and discharge of his duties; the bond shall be approved by the judge or register by his indorsement thereon, shall be filed with the record of the case, and inure to the benefit of all creditors proving their claims, and may be prosecuted in the name and for the benefit of any injured party. If the assignee fails to give the bond within such time as the judge orders, not exceeding ten days after notice to him of such order, the judge shall remove him and appoint another in his place.

SEC. 14. *And be it further enacted,* That as soon as said assignee is appointed and qualified, the judge, or, where there is no opposing interest, the register, shall, by an instrument under his hand, assign and convey to the assignee all the estate, real and personal, of the bankrupt, with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of said proceedings in bankruptcy, and thereupon, by operation of law, the title to all such property and estate, both real and personal, shall vest in said assignee, although the same is then attached on mesne process as the property of the debtor, and shall dissolve any such attachment made within four months next preceding the commencement of said proceedings: *Provided, however,* That there shall be excepted from the operation of the provisions of this section the necessary household and kitchen furniture, and such other articles and necessities of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars; and also the wearing apparel of such bankrupt, and

that of his wife and children, and the uniform, arms and equipments of any person who is or has been a soldier in the militia, or in the service of the United States; and such other property as now is, or hereafter shall be, exempted from attachment, or seizure, or levy on execution by the laws of the United States, and such other property not included in the foregoing exceptions as is exempted from levy and sale upon execution or other process or order of any court by the laws of the State in which the bankrupt has his domicile at the time of the commencement of the proceedings in bankruptcy, to an amount not exceeding that allowed by such State exemption laws in force in the year<sup>1</sup> eighteen hundred and sixty-four: *Provided*, That the foregoing exception shall operate as a limitation upon the conveyance of the property of the bankrupt to his assignees; and in no case shall the property hereby excepted pass to the assignees, or the title of the bankrupt thereto be impaired or affected by any of the provisions of this act; and the determination of the assignee in the matter shall, on exception taken, be subject to the final decision of the said court: *And provided further*, That no mortgage of any vessel or of any other goods or chattels, made as security for any debt or debts, in good faith and for present considerations and otherwise valid, and duly recorded, pursuant to any statute of the United States, or of any State, shall be invalidated or affected hereby; and all the property conveyed by the bankrupt in fraud of his creditors; all rights in equity, choses in action, patents and patent rights and copyrights; all debts due him, or any person for his use, and all liens and securities therefor; and all his rights of action for property or estate, real or personal, and for any cause of action which the bankrupt had against any person arising from contract or from the unlawful taking or detention, or of injury to the property of the bankrupt, and all his rights of redeeming such property or estate, with the like right, title, power, and authority to sell, manage, dis-

<sup>1</sup> The act of June 8, 1873 (17 St. L. 324), changes this year from "1864" to "1871."

pose of, sue for and recover or defend the same as the bankrupt might or could have had if no assignment had been made, shall, in virtue of the adjudication of bankruptcy and the appointment of his assignee, be at once vested in such assignee; and he may sue for and recover the said estate, debts and effects, and may prosecute and defend all suits at law or in equity, pending at the time of the adjudication of bankruptcy, in which such bankrupt is a party in his own name, in the same manner and with the like effect as they might have been<sup>1</sup> presented or defended by such bankrupt; and a copy, duly certified by the clerk of the court, under the seal thereof, of the assignment made by the judge or register, as the case may be, to him as assignee, shall be conclusive evidence of his title as such assignee to take, hold, sue for, and recover the property of the bankrupt, as herein-before mentioned; but no property held by the bankrupt in trust shall pass by such assignment. No person shall be entitled to maintain an action against an assignee in bankruptcy for anything done by him as such assignee, without previously giving him twenty days' notice of such action, specifying the cause thereof, to the end that such assignee may have an opportunity of tendering amend, should he see fit to do so. No person shall be entitled, as against the assignee, to withhold from him possession of any books of account of the bankrupt, or claim any lien thereon; and no suit in which the assignee is a party shall be abated by his death or removal from office; but the same may be prosecuted and defended by his successor, or by the surviving or remaining assignee, as the case may be. The assignee shall have authority, under the order and direction of the court, to redeem or discharge any mortgage or conditional contract, or pledge or deposit, or lien upon any property, real or personal, whenever payable, and to tender due performance of the condition thereof, or to sell the same subject to such mortgage, lien or other encumbrances. The debtor shall

<sup>1</sup> The act of July 27, 1868 (15 St. L. 228, § 2), changes the word "presented" to "prosecuted."

also, at the request of the assignee and at the expense of the estate, make and execute any instruments, deeds, and writings which may be proper to enable the assignee to possess himself fully of all the assets of the bankrupt. The assignee shall immediately give notice of his appointment, by publication at least once a week for three successive weeks in such newspapers as shall for that purpose be designated by the court, due regard being had to their general circulation in the district or in that portion of the district in which the bankrupt and his creditors shall reside, and shall, within six months, cause the assignment to him to be recorded in every registry of deeds or other office within the United States where a conveyance of any lands owned by the bankrupt ought by law to be recorded; and the record of such assignment, or a duly certified copy thereof, shall be evidence thereof in all courts.

SEC. 15.<sup>1</sup> *And be it further enacted*, That the assignee shall demand and receive, from any and all persons holding the

<sup>1</sup> The act of June 22, 1874 (18 St. L. 178, § 1), provides: "That the court may, in its discretion, on sufficient cause shown, and upon notice and hearing, direct the receiver or assignee to take possession of the property, and carry on the business of the debtor, or any part thereof, under the direction of the court, when, in its judgment, the interest of the estate as well as of the creditors will be promoted thereby, but not for a period exceeding nine months from the time the debtor shall have been declared a bankrupt: Provided, that such order shall not be made until the court shall be satisfied that it is approved by a majority in value of the creditors."

Section 4 provides: That unless otherwise ordered by the court, the assignee shall sell the property of

the bankrupt, whether real or personal, at public auction, in such parts or parcels and at such times and places as shall be best calculated to produce the greatest amount with the least expense. All notices of public sales under this act by any assignee or officer of the court shall be published once a week for three consecutive weeks in the newspaper or newspapers, to be designated by the judge, which, in his opinion, shall be best calculated to give general notice of the sale. And the court, on the application of any party in interest, shall have complete supervisory power over such sales, including the power to set aside the same and to order a resale, so that the property sold shall realize the largest sum. And the court may, in its discretion, order any real estate of the bank-

same, all the estate assigned, or intended to be assigned, under the provisions of this act; and he shall sell all such unencumbered estate, real and personal, which comes to his hands, on such terms as he thinks most for the interest of the creditors; but upon petition of any person interested, and for cause shown, the court may make such order concerning the time, place, and manner of sale as will, in its opinion, prove to the interest of the creditors; and the assignee shall keep a regular account<sup>1</sup> of all money received by him as assignee, to which every creditor shall, at reasonable times, have free resort.

SEC. 16. *And be it further enacted*, That the assignee shall have the like remedy to recover all said estate, debts and

rupt, or any part thereof, to be sold for one-fourth cash at the time of sale, and the residue within eighteen months in such instalments as the court may direct, bearing interest at the rate of seven per centum per annum, and secured by proper mortgage or lien upon the property so sold. And it shall be the duty of every assignee to keep a regular account of all moneys received or expended by him as such assignee, to which account every creditor shall, at reasonable times, have free access. [Here follows the penalty for failure to properly discharge his duties, etc.] That the assignee shall report, under oath, to the court, at least as often as once in three months, the condition of the estate in his charge, and the state of his accounts in detail, and at all other times when the court, on motion or otherwise, shall so order. And on any settlement of the accounts of any assignee, he shall be required to account for all interest, benefit or advantage received, or in any manner agreed to

be received, directly or indirectly, from the use, disposal or proceeds of the bankrupt's estate. And he shall be required, upon such settlement, to make and file in court an affidavit declaring, according to the truth, whether he has or has not, as the case may be, received, or is or is not, as the case may be, to receive, directly or indirectly, any interest, benefit or advantage from the use or deposit of such funds; and such assignee may be examined orally upon the same subject, and if he shall wilfully swear falsely, either in such affidavit or examination, or to his report provided for in this section, he shall be deemed to be guilty of perjury, and on conviction thereof, be punished by imprisonment in the penitentiary not less than one and not more than five years.

<sup>1</sup>The act of June 22, 1874 (18 St. L. 185, § 19), requires the assignee to make a report of the business transacted by him, and of the fees received, etc.



effects in his own name, as the creditor might have had if the decree in bankruptcy had not been rendered and no assignment had been made. If, at the time of the commencement of proceedings in bankruptcy, an action is pending in the name of the debtor for the recovery of a debt or other thing which might or ought to pass to the assignee by the assignment, the assignee shall, if he requires it, be admitted to prosecute the action in his own name, in like manner and with like effect as if it had been originally commenced by him. No suit pending in the name of the assignee shall be abated by his death or removal; but upon the motion of the surviving or remaining or new assignee, as the case may be, he shall be admitted to prosecute the suit in like manner and with like effect as if it had been originally commenced by him. In suits prosecuted by the assignee a certified copy of the assignment made to him by the judge or register shall be conclusive evidence of his authority to sue.

SEC. 17. *And be it further enacted,* That the assignee shall, as soon as may be after receiving any money belonging to the estate, deposit the same in some bank in his name as assignee, or otherwise keep it distinct and apart from all other money in his possession; and shall, as far as practicable, keep all goods and effects belonging to the estate separate and apart from all other goods in his possession, or designated by appropriate marks, so that they may be easily and clearly distinguished, and may not be exposed or liable to be taken as his property or for the payment of his debts. When it appears that the distribution of the estate may be delayed by litigation or other cause, the court may direct the temporary investment of the money belonging to such estate in securities to be approved by the judge or a register of said court, or may authorize the same to be deposited in any convenient bank upon such interest, not exceeding the legal rate, as the bank may contract with the assignee to pay thereon. He shall give written notice to all known creditors, by mail or otherwise, of all dividends, and such notice of meetings, after the first, as may be ordered by the

court. He shall be allowed, and may retain out of the money in his hands, all the necessary disbursements made by him in the discharge of his duty, and a reasonable compensation for his services, in the discretion of the court. He may, under the direction of the court, submit any controversy arising in the settlement of demands against the estate, or of debts due to it, to the determination of arbitrators, to be chosen by him, and the other party to the controversy, and may, under such direction, compound and settle any such controversy, by agreement with the other party, as he thinks proper and most for the interest of the creditors.

SEC. 18. *And be it further enacted,* That the court, after due notice and hearing, may remove an assignee for any cause which, in the judgment of the court, renders such removal necessary or expedient. At a meeting called by order of the court in its discretion for the purpose, or which shall be called upon the application of a majority of the creditors in number and value, the creditors may, with consent of [the] court, remove any assignee by such a vote as is herein, before provided for the choice of assignee. An assignee may, with the consent of the judge, resign his trust and be discharged therefrom. Vacancies caused by death or otherwise in the office of assignee may be filled by appointment of the court, or at its discretion by an election by the creditors in the manner hereinbefore provided, at a regular meeting, or at a meeting called for the purpose, with such notice thereof in writing to all known creditors, and by such person, as the court shall direct. The resignation or removal of an assignee shall in no way release him from performing all things requisite on his part for the proper closing up of his trust and the transmission thereof to his successors, nor shall it affect the liability of the principal or surety on the bond given by the assignee. When, by death or otherwise, the number of assignees is reduced, the estate of the debtor not lawfully disposed of shall vest in the remaining assignee or assignees, and the persons selected to fill vacancies, if any, with the same powers and duties relative thereto as if they were orig-

inally chosen. Any former assignee, his executors or administrators, upon request, and at the expense of the estate, shall make and execute to the new assignee all deeds, conveyances, and assurances, and do all other lawful acts requisite to enable him to recover and receive all the estate. And the court may make all orders which it may deem expedient to secure the proper fulfillment of the duties of any former assignee, and the rights and interests of all persons interested in the estate. No person who has received any preference contrary to the provisions of this act shall vote for or be eligible as assignee; but no title to property, real or personal, sold, transferred, or conveyed by an assignee, shall be affected or impaired by reason of his ineligibility. An assignee refusing or unreasonably neglecting to execute an instrument when lawfully required by the court, or disobeying a lawful order or decree of the court in the premises, may be punished as for a contempt of court.

#### OF DEBTS AND PROOF OF CLAIMS.

SEC. 19. *And be it further enacted*, That all debts due and payable from the bankrupt at the time of the adjudication of bankruptcy, and all debts then existing but not payable until a future day, a rebate of interest being made when no interest is payable by the terms of the contract, may be proved against the estate of the bankrupt. All demands against the bankrupt for or on account of any goods or chattels wrongfully taken, converted, or withheld by him may be proved and allowed as debts to the amount of the value of the property so taken or withheld, with interest. If the bankrupt shall be bound as drawer, indorser, surety, bail, or guarantor upon any bill, bond, note, or any other specialty or contract, or for any debt of another person, and his liability shall not have become absolute until after the adjudication of bankruptcy, the creditor may prove the same after such liability shall have become fixed, and before the final dividend shall have been declared. In all cases of contingent

debts and contingent liabilities contracted by the bankrupt, and not herein otherwise provided for, the creditor may make claim therefor, and have his claim allowed, with the right to share in the dividends, if the contingency shall happen before the order for the final dividend; or he may at any time apply to the court to have the present value of the debt or liability ascertained and liquidated, which shall then be done in such manner as the court shall order, and he shall be allowed to prove for the amount so ascertained. Any person liable as bail, surety, guarantor, or otherwise for the bankrupt, who shall have paid the debt, or any part thereof, in discharge of the whole, shall be entitled to prove such debt or to stand in the place of the creditor if he shall have proved the same, although such payment shall have been made after the proceedings in bankruptcy were commenced. And any person so liable for the bankrupt, and who has not paid the whole of said debt, but is still liable for the same or any part thereof, may, if the creditor shall fail or omit to prove such debt, prove the same either in the name of the creditor or otherwise, as may be provided by the rules, and subject to such regulations and limitations as may be established by such rules. Where the bankrupt is liable to pay rent or other debt falling due at fixed and stated periods, the creditor may prove for a proportionate part thereof up to the time of the bankruptcy, as if the same grew due from day to day, and not at such fixed and stated periods. If any bankrupt shall be liable for unliquidated damages arising out of any contract or promise, or on account of any goods or chattels wrongfully taken, converted, or withheld, the court may cause such damages to be assessed in such mode as it may deem best, and the sum so assessed may be proved against the estate. No debts other than those above specified shall be proved or allowed against the estate.

SEC. 20. *And be it further enacted,* That, in all cases of mutual debts or mutual credits between the parties, the account between them shall be stated, and one debt set off against the other, and the balance only shall be allowed or

paid, but no set-off shall be allowed of a claim in its nature not provable against the estate:<sup>1</sup> *Provided*, That no set-off shall be allowed in favor of any debtor to the bankrupt of a claim purchased by or transferred to him after the filing of the petition. When a creditor has a mortgage or pledge of real or personal property of the bankrupt, or a lien thereon for securing the payment of a debt owing to him from the bankrupt, he shall be admitted as a creditor only for the balance of the debt after deducting the value of such property, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the court shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt. If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the bankrupt's right of redemption therein on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all deeds and writings necessary or proper to consummate the transaction. If the property is not so sold or released and delivered up, the creditor shall not be allowed to prove any part of his debt.

SEC. 21. *And be it further enacted*, That no creditor proving his debt or claim shall be allowed to maintain any suit at law or in equity therefor against the bankrupt, but shall be deemed to have waived all right of action and suit against the bankrupt, and all proceedings already commenced or unsatisfied judgments already obtained thereon, shall be deemed to be discharged and surrendered thereby;<sup>2</sup> and no creditor

<sup>1</sup> The act of June 22, 1874 (18 St. L., L. 179, § 7), amends this section by inserting, immediately after the word "thereby," "But a creditor proving his debt or claim shall not be held to have waived his right of action or suit against the bankrupt where a discharge has been refused or the proceedings have been determined without a discharge."

<sup>2</sup> The act of June 22, 1874 (18 St.

whose debt is provable under this act shall be allowed to prosecute to final judgment any suit at law or in equity therefor against the bankrupt, until the question of the debtor's discharge shall have been determined; and any such suit or proceedings shall, upon the application of the bankrupt, be stayed to await the determination of the court in bankruptcy on the question of the discharge, provided there be no unreasonable delay on the part of the bankrupt in endeavoring to obtain his discharge, and provided, also, that if the amount due the creditor is in dispute, the suit, by leave of the court in bankruptcy, may proceed to judgment for the purpose of ascertaining the amount due, which amount may be proved in bankruptcy, but execution shall be stayed as aforesaid. If any bankrupt shall, at the time of adjudication, be liable upon any bill of exchange, promissory note, or other obligation in respect of distinct contracts as a member of two or more firms carrying on separate and distinct trades, and having distinct estates to be wound up in bankruptcy, or as a sole trader and also [as] a member of a firm, the circumstance that such firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof and receipt of dividend in respect of such distinct contracts against the estates respectively liable upon such contracts.

SEC. 22.<sup>1</sup> *And be it further enacted*, That all proofs of debts against the estate of the bankrupt, by or in behalf of creditors residing within the judicial district where the proceedings in bankruptcy are pending, shall be made before one of the registers of the court in said district, and by or in behalf of non-resident<sup>2</sup> debtors before any register in bankruptcy

<sup>1</sup> Section 20 of the act of June 22, 1874 (18 St. L. 186), provides "that in addition to the officers now authorized to take proof of debts against the estate of a bankrupt, notaries public are hereby authorized to take such proof in the manner and under the regulations provided by law; such proof to be cer-

tified by the notary and attested by his signature and official seal." By the act of July 27, 1868 (15 St. L. 223, § 3), this right to take proof was extended to United States commissioners.

<sup>2</sup> The act of July 27, 1868 (15 St. L. 223, § 2), changes this word "debtors" to "creditors."

in the judicial district where such creditors or either of them reside, or before any commissioner of the circuit court authorized to administer oaths in any district. To entitle a claimant against the estate of a bankrupt to have his demand allowed, it must be verified by a deposition in writing on oath or solemn affirmation before the proper register or commissioner setting forth the demand, the consideration thereof, whether any and what securities are held therefor, and whether any and what payments have been made thereon; that the sum claimed is justly due from the bankrupt to the claimant; that the claimant has not, nor has any other person, for his use, received any security or satisfaction whatever other than that by him set forth, that the claim was not procured for the purpose of influencing the proceedings under this act, and that no bargain or agreement, express or implied, has been made or entered into, by or on behalf of such creditor, to sell, transfer, or dispose of the said claim or any part thereof, against such bankrupt, or take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such creditor for assignee, or any action on the part of such creditor, or any other person in the proceedings under this act, is or shall be in any way affected, influenced, or controlled, and no claim shall be allowed unless all the statements set forth in such deposition shall appear to be true. Such oath or solemn affirmation shall be made by the claimant, testifying of his own knowledge, unless he is absent from the United States or prevented by some other good cause from testifying, in which cases the demand may be verified in like manner by the attorney or authorized agent of the claimant testifying to the best of his knowledge, information, and belief, and setting forth his means of knowledge; or if in a foreign country, the oath of the creditor may be taken before any minister, consul, or vice-consul of the United States; and the court may, if it shall see fit, require or receive further pertinent evidence either for or against the admission of the claim. Corporations may verify their claims by the oath or solemn affirma-

tion of their president, cashier, or treasurer. If the proof is satisfactory to the register or commissioner, it shall be signed by the deponent, and delivered or sent by mail to the assignee, who shall examine the same and compare it with the books and accounts of the bankrupt, and shall register, in a book to be kept by him for that purpose, the names of creditors who have proved their claims, in the order in which such proof is received, stating the time of receipt of such proof, and the amount and nature of the debts, which books shall be opened to the inspection of all the creditors. The court may, on the application of the assignee, or of any creditor, or of the bankrupt, or without any application, examine upon oath the bankrupt, or any person tendering or who has made proof of claims, and may summon any person capable of giving evidence concerning such proof, or concerning the debt sought to be proved, and shall reject all claims not duly proved, or where the proof shows the claim to be founded in fraud, illegality, or mistake.

SEC. 23. *And be it further enacted*, That when a claim is presented for proof before the election of the assignee, and the judge entertains doubts of its validity or of the right of the creditor to prove it, and is of opinion that such validity or right ought to be investigated by the assignee, he may postpone the proof of the claim until the assignee is chosen. Any person who, after the approval of this act shall have accepted any preference, having reasonable cause to believe that the same was made or given by the debtor, contrary to any provision of this act, shall not prove the debt or claim on account of which the preference was made or given, nor shall he receive any dividend therefrom until he shall first have surrendered to the assignee all property, money, benefit, or advantage received by him under such preference. The court shall allow all debts duly proved, and shall cause a list thereof to be made and certified by one of the registers; and any creditor may act at all meetings by his duly constituted attorney the same as though personally present.

SEC. 24. *And be it further enacted*, That a supposed cred-



itor who takes an appeal to the circuit court from the decision of the district court, rejecting his claim in whole or in part, shall, upon entering his appeal in the circuit court, file in the clerk's office thereof a statement in writing of his claim, setting forth the same, substantially, as in a declaration for the same cause of action at law, and the assignee shall plead or answer thereto in like manner, and like proceedings shall thereupon be had in the pleadings, trial, and determination of the cause, as in action at law commenced and prosecuted, in the usual manner, in the courts of the United States, except that no execution shall be awarded against the assignee for the amount of a debt found due to the creditor. The final judgment of the court shall be conclusive, and the list of debts shall, if necessary, be altered to conform thereto. The party prevailing in the suit shall be entitled to costs against the adverse party, to be taxed and recovered as in suits at law; if recovered against the assignee, they shall be allowed out of the estate. A bill of exchange, promissory note, or other instrument, used in evidence upon the proof of a claim, and left in court or deposited in the clerk's office, may be delivered, by the register or clerk having the custody thereof, to the person who used it, upon his filing a copy thereof, attested by the clerk of the court, who shall indorse upon it the name of the party against whose estate it has been proved, and the date and amount of any dividend declared thereon.

#### OF PROPERTY PERISHABLE AND IN DISPUTE.

SEC. 25. *And be it further enacted,* That when it appears to the satisfaction of the court that the estate of the debtor, or any part thereof, is of a perishable nature, or liable to deteriorate in value, the court may order the same to be sold, in such manner as may be deemed most expedient, under the direction of the messenger or assignee, as the case may be, who shall hold the funds received in place of the estate disposed of; and whenever it appears to the satisfaction of

the court that the title of any portion of the estate, real or personal, which has come into possession of the assignee, or which is claimed by him, is in dispute, the court may, upon the petition of the assignee, and after such notice to the claimant, his agent or attorney, as the court shall deem reasonable, order it to be sold, under the direction of the assignee, who shall hold the funds received in place of the estate disposed of; and the proceeds of the sale shall be considered the measure of the value of the property in any suit or controversy between the parties in any courts. But this provision shall not prevent the recovery of the property from the possession of the assignee by any proper action commenced at any time before the court orders the sale.

#### EXAMINATION OF BANKRUPTS.

SEC. 26. *And be it further enacted*, That the court may, on the application of the assignee in bankruptcy, or of any creditor, or without any application, at all times require the bankrupt, upon reasonable notice, to attend and submit to an examination, on oath, upon all matters relating to the disposal or condition of his property, to his trade and dealings with others, and his accounts concerning the same, to all debts due to or claimed from him, and to all other matters concerning his property and estate and the due settlement thereof according to law, which examination shall be in writing, and shall be signed by the bankrupt and filed with the other proceedings; and the court may, in like manner, require the attendance of any other person as a witness, and if such person shall fail to attend, on being summoned thereto, the court may compel his attendance by warrant directed to the marshal, commanding him to arrest such person and bring him forthwith before the court, or before a register in bankruptcy, for examination as such witness. If the bankrupt is imprisoned, absent, or disabled from attendance, the court may order him to be produced by the jailer, or any officer in whose custody he may be, or may direct

the examination to be had, taken, and certified at such time and place and in such manner as the court may deem proper, and with like effect as if such examination had been had in court. The bankrupt shall at all times, until his discharge, be subject to the order of the court, and shall, at the expense of the estate, execute all proper writings and instruments, and do and perform all acts required by the court touching the assigned property or estate, and to enable the assignee to demand, recover, and receive all the property and estate assigned, wherever situated; and for neglect or refusal to obey any order of the court, such bankrupt may be committed and punished as for a contempt of court. If the bankrupt is without the district, and unable to return and personally attend at any of the times or do any of the acts which may be specified or required pursuant to this section, and if it appears that such absence was not caused by wilful default, and if, as soon as may be after the removal of such impediment, he offers to attend and submit to the order of the court in all respects, he shall be permitted so to do, with like effect as if he had not been in default. He shall also be at liberty, from time to time, upon oath to attend and correct his schedule of creditors and property, so that the same shall conform to the facts. For good cause shown, the wife of any bankrupt may be required to attend before the court, to the end that she may be examined as a witness; and if such wife do not attend at the time and place specified in the order, the bankrupt shall not be entitled to a discharge unless he shall prove to the satisfaction of the court that he was unable to procure the attendance of his wife. No bankrupt shall be liable to arrest during the pendency of the proceedings in bankruptcy in any civil action, unless the same is founded on some debt or claim from which his discharge in bankruptcy would not release him.<sup>1</sup>

<sup>1</sup>This section is amended by the act of June 22, 1874, § 8 (18 St. L. 180), by adding the following words at the end thereof: "That in all causes and trials arising or ordered under this act, the alleged bankrupt, and any party thereto, shall be a competent witness."

## OF THE DISTRIBUTION OF THE BANKRUPT'S ESTATE.

SEC. 27. *And be it further enacted,* That all creditors whose debts are duly proved and allowed shall be entitled to share in the bankrupt's property and estate *pro rata*, without any priority or preference whatever, except that wages due from him to any operative, or clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the adjudication of bankruptcy, shall be entitled to priority, and shall be first paid in full: *Provided*, That any debt proved by any person liable, as bail, surety, guarantor, or otherwise, for the bankrupt, shall not be paid to the person so proving the same until satisfactory evidence shall be produced of the payment of such debt by such person so liable, and the share to which such debt would be entitled may be paid into court, or otherwise held for the benefit of the party entitled thereto, as the court may direct. At the expiration of three months from the date of the adjudication of bankruptcy in any case, or as much earlier as the court may direct, the court, upon request of the assignee, shall call a general meeting of the creditors, of which due notice shall be given, and the assignee shall then report, and exhibit to the court and to the creditors just and true accounts of all his receipts and payments, verified by his oath, and he shall also produce and file vouchers for all payments for which vouchers shall be required by any rule of the court; he shall also submit the schedule of the bankrupt's creditors and property as amended, duly verified by the bankrupt, and a statement of the whole estate of the bankrupt as then ascertained, of the property recovered and of the property outstanding, specifying the cause of its being outstanding, also what debts or claims are yet undetermined, and stating what sum remains in his hands. At such meeting the majority in value of the creditors present shall determine whether any and what part of the net proceeds of the estate, after deducting and retaining a sum sufficient to provide for all undetermined claims which, by reason of the

distant residence of the creditor, or for other sufficient reason, have not been proved, and for other expenses and contingencies, shall be divided among the creditors; but unless at least one half in value of the creditors shall attend such meeting, either in person or by attorney, it shall be the duty of the assignee so to determine. In case a dividend is ordered, the register shall, within ten days after such meeting, prepare a list of creditors entitled to dividend, and shall calculate and set opposite to the name of each creditor who has proved his claim the dividend to which he is entitled out of the net proceeds of the estate set apart for dividend, and shall forward by mail to every creditor a statement of the dividend to which he is entitled, and such creditor shall be paid by the assignee in such manner as the court may direct.

SEC. 28. *And be it further enacted*, That the like proceedings shall be had at the expiration of the next three months, or earlier, if practicable, and a third meeting of the creditors shall then be called by the court, and a final dividend then declared, unless any action at law or suit in equity be pending, or unless some other estate or effects of the debtor afterwards come to the hands of the assignee, in which case the assignee shall, as soon as may be, convert such estate or effects into money, and within two months after the same shall be so converted, the same shall be divided in manner aforesaid. Further dividends shall be made in like manner as often as occasion requires; and after the third meeting of creditors no further meeting shall be called, unless ordered by the court. If at any time there shall be in the hands of the assignee any outstanding debts or other property, due or belonging to the estate, which cannot be collected and received by the assignee without unreasonable or inconvenient delay or expense, the assignee may, under direction of the court, sell and assign such debts or other property in such manner as the court shall order. No dividend already declared shall be disturbed by reason of debts being subsequently proved, but the creditors proving such

debts shall be entitled to a dividend equal to those already received by the other creditors before any further payment is made to the latter. Preparatory to the final dividend, the assignee shall submit his account to the court and file the same, and give notice to the creditors of such filing, and shall also give notice that he will apply for a settlement of his account, and for a discharge from all liability as assignee, at a time to be specified in such notice, and at such time the court shall audit and pass the accounts of the assignee, and such assignee shall, if required by the court, be examined as to the truth of such account, and if found correct he shall thereby be discharged from all liability as assignee to any creditor of the bankrupt. The court shall thereupon order a dividend of the estate and effects, or of such part thereof as it sees fit, among such of the creditors as have proved their claims, in proportion to the respective amount of their said debts. In addition to all expenses necessarily incurred by him in the execution of his trust, in any case, the assignee shall be entitled to an allowance for his services in such case on all moneys received and paid out by him therein, for any sum not exceeding one thousand dollars, five per centum thereof; for any larger sum, not exceeding five thousand dollars, two and a half per centum on the excess over one thousand dollars; and for any larger sum, one per centum on the excess over five thousand dollars, and if, at any time, there shall not be in his hands a sufficient amount of money to defray the necessary expenses required for the further execution of his trust, he shall not be obliged to proceed therein until the necessary funds are advanced or satisfactorily secured to him. If by accident, mistake, or other cause, without fault of the assignee, either or both of the said second and third meetings should not be held within the times limited, the court may, upon motion of an interested party, order such meetings, with like effect as to the validity of the proceedings as if the meeting had been duly held. In the order for a dividend, under this section, the

following claims shall be entitled to priority or preference, and to be first paid in full in the following order:—

First. The fees, costs and expenses of suits, and the several proceedings in bankruptcy under this act, and for the custody of property, as herein provided.

Second. All debts due to the United States, and all taxes and assessments under the laws thereof.

Third. All debts due to the state in which the proceedings in bankruptcy are pending, and all taxes and assessments made under the laws of such state.

Fourth. Wages due to any operative, clerk, or house servant, to an amount not exceeding fifty dollars, for labor performed within six months next preceding the first publication of the notice of proceedings in bankruptcy.

Fifth. All debts due to any persons who, by the laws of the United States, are or may be entitled to a priority or preference, in like manner as if this act had not been passed: *Always provided*, That nothing contained in this act shall interfere with the assessment and collection of taxes by the authority of the United States or any State.

#### OF THE BANKRUPT'S DISCHARGE AND ITS EFFECT.

SEC. 29. *And be it further enacted*, That at any time after the expiration of six months from the adjudication of bankruptcy, or if no debts have been proved against the bankrupt, or if no assets have come to the hands of the assignee, at any time after the expiration of sixty days,<sup>1</sup> and within one year from the adjudication of bankruptcy, the bankrupt may apply to the court for a discharge from his debts, and the court shall thereupon order notice to be given by mail to all creditors who have proved their debts, and by publication at least once a week in such newspapers as the court

<sup>1</sup> The act of July 26, 1876 (19 St. L. 102), amends this section by substituting in lieu of the words "and within one year from the adjudica-

tion of bankruptcy" the words "before the final disposition of the cause."

shall designate, due regard being had to the general circulation of the same in the district, or in that portion of the district in which the bankrupt and his creditors shall reside; to appear on a day appointed for that purpose, and show cause why a discharge should not be granted to the bankrupt. No discharge shall be granted, or, if granted, be valid, if the bankrupt has wilfully sworn falsely in his affidavit annexed to his petition, schedule, or inventory, or upon any examination in the course of the proceedings in bankruptcy, in relation to any material fact concerning his estate or his debts, or to any other material fact; or if he has concealed any part of his estate or effects, or any books or writings relating thereto, or if he has been guilty of any fraud or negligence in the care, custody, or delivery to the assignee of the property belonging to him at the time of the presentation of his petition and inventory, excepting such property as he is permitted to retain under the provisions of this act, or if he has caused, permitted, or suffered any loss, waste, or destruction thereof; or if, within four months before the commencement of such proceedings, he has procured his lands, goods, money, or chattels to be attached, sequestered, or seized on execution; or if, since the passage of this act, he has destroyed, mutilated, altered, or falsified any of his books, documents, papers, writings, or securities, or has made or been privy to the making of any false or fraudulent entry in any book of account or other document, with intent to defraud his creditors; or has removed or caused to be removed any part of his property from the district, with intent to defraud his creditors; or if he has given any fraudulent preference contrary to the provisions of this act, or made any fraudulent payment, gift, transfer, conveyance, or assignment of any part of his property, or has lost any part thereof in gaming, or has admitted a false or fictitious debt against his estate; or if, having acknowledged that any person has proved such false or fictitious debt, he has not disclosed the same to his assignee within one month after such knowledge; or if, being a merchant or tradesman, he has not, subsequently



to the passage of this act, kept proper books of account; or if he, or any person in his behalf, has procured the assent of any creditor to the discharge, or influenced the action of any creditor at any stage of the proceedings, by any pecuniary consideration or obligation; or if he has, in contemplation of becoming bankrupt, made any pledge, payment, transfer, assignment or conveyance of any part of his property, directly or indirectly, absolutely or conditionally, for the purpose of preferring any creditor or person having a claim against him, or who is or may be under liability for him, or for the purpose of preventing the property from coming into the hands of the assignee, or of being distributed under this act in satisfaction of his debts; or if he has been convicted of any misdemeanor under this act, or has been guilty of any fraud whatever contrary to the true intent of this act; and before any discharge is granted, the bankrupt shall take and subscribe an oath to the effect that he has not done, suffered, or been privy to any act, matter, or thing specified in this act as a ground for withholding such discharge, or as invalidating such discharge if granted.

SEC. 30. *And be it further enacted*, That no person who shall have been discharged under this act, and shall afterwards become bankrupt, on his own application shall be again entitled to a discharge whose estate is insufficient to pay seventy per centum of the debts proved against it, unless the assent in writing of three fourths in value of his creditors who have proved their claims is filed at or before the time of application for discharge; but a bankrupt who shall prove to the satisfaction of the court that he has paid all the debts owing by him at the time of any previous bankruptcy, or who has been voluntarily released therefrom by his creditors, shall be entitled to a discharge in the same manner and with the same effect as if he had not previously been bankrupt.

SEC. 31. *And be it further enacted*, That any creditor opposing the discharge of any bankrupt may file a specification in writing of the grounds of his opposition, and the court

may in its discretion order any question of fact so presented to be tried at a stated session of the district court.

SEC. 32. *And be it further enacted*, That if it shall appear to the court that the bankrupt has in all things conformed to his duty under this act, and that he is entitled, under the provisions thereof, to receive a discharge, the court shall grant him a discharge from all his debts except as hereinafter provided, and shall give him a certificate thereof under the seal of the court, in substance as follows:

*District Court of the United States, District of —.*

Whereas, — — — has been duly adjudged a bankrupt under the act of Congress establishing a uniform system of bankruptcy throughout the United States, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by the court that said — — — be forever discharged from all debts and claims which by said act are made provable against his estate, and which existed on the — day of —, on which day the petition for adjudication was filed by (or against) him; excepting such debts, if any, as are by said act excepted from the operation of a discharge in bankruptcy. Given under my hand and the seal of the court at —, in the said district, this — day of —, A. D. —. — — —, Judge.

[Seal.]

SEC. 33. *And be it further enacted*, That no debt created by the fraud or embezzlement of the bankrupt, or by his defalcation as a public officer, or while acting in any fiduciary character, shall be discharged under this act; but the debt may be proved, and the dividend thereon shall be a payment on account of said debt; and no discharge granted under this act shall release, discharge, or affect any person liable for the same debt for or with the bankrupt, either as partner, joint contractor, indorser, surety, or otherwise. And in all proceedings in bankruptcy commenced after one year from the time this act shall go into operation, no discharge shall be granted to a debtor whose assets do not pay fifty<sup>1</sup>

<sup>1</sup> The act of June 22, 1874 (18 St. (15 St. L. 228, § 1), as follows: That L. 180, § 9), amends this section as in cases of compulsory or involuntary bankruptcy, the provisions of

per centum of the claims against his estate, unless the assent in writing of a majority in number and value of his creditors who have proved their claims is filed in the case at or before the time of application for discharge.

Sec. 34. *And be it further enacted*, That a discharge duly granted under this act shall, with the exceptions aforesaid, release the bankrupt from all debts, claims, liabilities, and demands which were or might have been proved against his estate in bankruptcy, and may be pleaded, by a simple averment that on the day of its date such discharge was granted to him, setting the same forth in hæc verba, as a full and complete bar to all suits brought on any such debts, claims, liabilities, or demands, and the certificate shall be conclusive evidence in favor of such bankrupt of the fact and [the] regularity of such discharge: *Always provided*, That any creditor or creditors of said bankrupt, whose debt was proved or provable against the estate in bankruptcy, who shall see fit to contest the validity of said discharge on the ground that it was fraudulently obtained, may, at any time within two years after the date thereof, apply to the court which granted it to set aside and annul the same. Said application shall be in writing, shall specify which, in particular, of the several acts mentioned in section twenty-nine it is intended to give evidence of against the bankrupt, setting

said act, and any amendment thereof, or of any supplement thereto, requiring the payment of any proportion of the debts of the bankrupt, or the assent of any portion of his creditors, as a condition of his discharge from his debts, shall not apply; but he may, if otherwise entitled thereto, be discharged by the court in the same manner and with the same effect as if he had paid such per centum of his debts, or as if the required proportion of his creditors had assented thereto. And in cases of

voluntary bankruptcy, no discharge shall be granted to a debtor whose assets shall not be equal to thirty per centum of the claims proved against his estate, upon which he shall be liable as principal debtor, without the assent of at least one-fourth of his creditors in number, and one-third in value; and the provision in section thirty-three of said act of March second, eighteen hundred and sixty-seven, requiring fifty per centum of such assets, is hereby repealed.

forth the grounds of avoidance, and no evidence shall be admitted as to any other of the said acts; but said application shall be subject to amendment at the discretion of the court. The court shall cause reasonable notice of said application to be given to said bankrupt, and order him to appear and answer the same, within such time as to the court shall seem fit and proper. If, upon the hearing of said parties, the court shall find that the fraudulent acts, or any of them, set forth as aforesaid by said creditor or creditors against the bankrupt, are proved, and that said creditor or creditors had no knowledge of the same until after the granting of said discharge, judgment shall be given in favor of said creditor or creditors, and the discharge of said bankrupt shall be set aside and annulled. But if said court shall find that said fraudulent acts and all of them, set forth as aforesaid, are not proved, or that they were known to said creditor or creditors before the granting of said discharge, then judgment shall be rendered in favor of the bankrupt, and the validity of his discharge shall not be affected by said proceedings.

#### PREFERENCES AND FRAUDULENT CONVEYANCES DECLARED VOID.

SEC. 35.<sup>1</sup> *And be it further enacted*, That if any person, being insolvent, or in contemplation of insolvency, within four months before the filing of the petition by or against

<sup>1</sup> The act of June 22, 1874 (18 St. L. 180, §§ 10, 11), makes the following change with reference to this section: "That in cases of involuntary or compulsory bankruptcy, the period of four months mentioned in section thirty-five of the act to which this is an amendment, is hereby changed to two months; but this provision shall not take effect until two months after the passage of this act. And in the cases aforesaid, the period of six months men-

tioned in said section thirty-five is hereby changed to three months; but this provision shall not take effect until three months after the passage of this act."

It is further amended as follows:

"First. After the word 'and,' in line eleven, insert the word 'knowing.'"

"Secondly. After the word 'attachment,' in the same line, insert the words 'sequestration, seizure.'"

"Thirdly. After the word 'and,'

him, with a view to give a preference to any creditor or person having a claim against him, or who is under any liability for him, procures any part of his property to be attached, sequestered, or seized on execution, or makes any payment, pledge, assignment, transfer, or conveyance of any part of his property, either directly or indirectly, absolutely or conditionally, the person receiving such payment, pledge, assignment, transfer, or conveyance, or to be benefited thereby, or by such attachment, having reasonable cause to believe such person is insolvent, and that such attachment, payment, pledge, assignment, or conveyance is made in fraud of the provisions of this act, the same shall be void, and the assignee may recover the property, or the value of it, from the person so receiving it, or so to be benefited; and if any person being insolvent, or in contemplation of insolvency or bankruptcy, within six months before the filing of the petition by or against him, makes any payment, sale, assignment, transfer, conveyance, or other disposition of any part of his property to any person who then has reasonable cause to believe him to be insolvent, or to be acting in contemplation of insolvency, and that such payment, sale, assignment, transfer, or other conveyance is made with a view to prevent his property from coming to his assignee in bankruptcy, or to prevent the same from being distributed under this act, or to defeat the object of, or in any way impair, hinder, impede, or delay the operation and effect of, or to evade any of the provisions of this act, the sale, assignment, transfer, or conveyance shall be void, and the assignee may recover the property, or the value thereof, as assets of the bankrupt. And if such sale, assignment, transfer, or conveyance is not made in the usual and ordinary course of business of the debtor, the fact shall be *prima facie* evidence of fraud. Any contract, covenant, or security made or given by a bankrupt

in line twenty, insert the word "knowing." And nothing in said section thirty-five shall be construed to invalidate any loan of actual value, or the security therefor, made in good faith, upon a security taken in good faith on the occasion of the making of such loan."

or other person with, or in trust for, any creditor, for securing the payment of any money as a consideration for or with intent to induce the creditor to forbear opposing the application for discharge of the bankrupt, shall be void; and if any creditor shall obtain any sum of money or other goods, chattels, or security from any person as an inducement for forbearing to oppose, or consenting to such application for discharge, every creditor so offending shall forfeit all right to any share or dividend in the estate of the bankrupt, and shall also forfeit double the value or amount of such money, goods, chattels, or security so obtained to be recovered by the assignee for the benefit of the estate.

#### BANKRUPTCY OF PARTNERSHIPS AND OF CORPORATIONS.

SEC. 36. *And be it further enacted,* That where two or more persons who are partners in trade shall be adjudged bankrupt, either on the petition of such partners, or any one of them, or on the petition of any creditor of the partners, a warrant shall issue in the manner provided by this act, upon which all the joint stock and property of the copartnership, and also all the separate estate of each of the partners, shall be taken, excepting such parts thereof as are hereinbefore excepted; and all the creditors of the company, and the separate creditors of each partner, shall be allowed to prove their respective debts; and the assignee shall be chosen by the creditors of the company, and shall also keep separate accounts of the joint stock or property of the copartnership and of the separate estate of each member thereof; and after deducting out of the whole amount received by such assignee the whole of the expenses and disbursements, the net proceeds of the joint stock shall be appropriated to pay the creditors of the copartnership, and the net proceeds of the separate estate of each partner shall be appropriated to pay his separate creditors; and if there shall be any balance of the separate estate of any partner, after the payment of his separate debts, such balance shall

be added to the joint stock for the payment of the joint creditors; and if there shall be any balance of the joint stock after payment of the joint debts, such balance shall be divided and appropriated to and among the separate estates of the several partners according to their respective right and interest therein, and as it would have been if the partnership had been dissolved without any bankruptcy; and the sum so appropriated to the separate estate of each partner shall be applied to the payment of his separate debts; and the certificate of discharge shall be granted or refused to each partner as the same would or ought to be if the proceedings had been against him alone under this act; and in all other respects the proceedings against partners shall be conducted in the like manner as if they had been commenced and prosecuted against one person alone. If such copartners reside in different districts, that court in which the petition is first filed shall retain exclusive jurisdiction over the case.

SEC. 37. *And be it further enacted*, That the provisions of this act shall apply to all moneyed business or commercial corporations and joint stock companies, and that upon the petition of any officer of any such corporation or company, duly authorized by a vote of a majority of the corporators at any legal meeting called for the purpose, or upon the petition of any creditor or creditors of such corporation or company, made and presented in the manner hereinafter provided in respect to debtors, the like proceedings shall be had and taken as are hereinafter provided in the case of debtors; and all the provisions of this act which apply to the debtor, or set forth his duties in regard to furnishing schedules and inventories, executing papers, submitting to examinations, disclosing, making over, secreting, concealing, conveying, assigning, or paying away his money or property, shall in like manner, and with like force, effect, and penalties, apply to each and every officer of such corporation or company in relation to the same matters concerning the corporation or company, and the money and property thereof.

All payments, conveyances, and assignments declared fraudulent and void by this act when made by a debtor, shall in like manner, and to the like extent, and with like remedies, be fraudulent and void when made by a corporation or company. No allowance or discharge shall be granted to any corporation or joint stock company, or to any person or officer or member thereof: *Provided*, That whenever any corporation by proceedings under this act shall be declared bankrupt, all its property and assets shall be distributed to the creditors of such corporations in the manner provided in this act in respect to natural persons.

#### OF DATES AND DEPOSITIONS.

SEC. 38. *And be it further enacted*, That the filing of a petition for adjudication in bankruptcy, either by a debtor in his own behalf, or by any creditor against a debtor; upon which an order may be issued by the court, or by a register in the manner provided in section four, shall be deemed and taken to be the commencement of proceedings in bankruptcy under this act; the proceedings in all cases of bankruptcy shall be deemed matters of record, but the same shall not be required to be recorded at large, but shall be carefully filed, kept, and numbered in the office of the clerk of the court, and a docket only, or short memorandum thereof, kept in books to be provided for that purpose, which shall be open to public inspection. Copies of such records, duly certified under the seal of the court, shall in all cases be prima facie evidence of the facts therein stated. Evidence or examination in any of the proceedings under this act may be taken before the court, or a register in bankruptcy, viva voce or in writing, before a commissioner of the circuit court, or by affidavit, or on commission, and the court may direct a reference to a register in bankruptcy, or other suitable person, to take and certify such examination, and may compel the attendance of witnesses, the production of books and papers, and the giving of testimony in the same manner as in suits in equity in the circuit court.



## INVOLUNTARY BANKRUPTCY.

SEC. 39. *And be it further enacted*, That any person residing and owing debts as aforesaid, who, after the passage of this act, shall depart from the State, district, or Territory of which he is an inhabitant, with intent to defraud his creditors, or, being absent, shall, with such intent, remain absent; or shall conceal himself to avoid the service of legal process in any action for the recovery of a debt or demand provable under this act; or shall conceal or remove any of his property to avoid its being attached, taken, or sequestered on legal process; or shall make any assignment, gift, sale, conveyance, or transfer of his estate, property, rights, or credits, either within the United States or elsewhere, with intent to delay, defraud, or hinder his creditors; or who has been arrested and held in custody under or by virtue of mesne process or execution, issued out of any court<sup>1</sup> of any State, district, or Territory, within which such debtor resides or has property founded upon a demand in its nature provable against a bankrupt's estate under this act, and for a sum exceeding one hundred dollars, and such process is remaining in force and not discharged by payment, or in any other manner provided by the law<sup>1</sup> of such State, district, or Territory applicable thereto, for a period of<sup>2</sup> seven days; or has been actually imprisoned for more than<sup>2</sup> seven days in a civil action, founded on contract, for the sum of one hundred dollars or upwards; or who, being bankrupt or insolvent, or in contemplation of bankruptcy or insolvency, shall make any payment, gift, grant, sale, conveyance, or transfer of money or other property, estate, rights, or credits,<sup>3</sup> or give any warrant to confess judgment; or procure or suffer his property to be taken on legal process, with intent to give a preference to one or more of his creditors, or to any person

<sup>1</sup> The act of June 22, 1874 (18 St. 1874, above, changes "seven" to L. 180, § 12), amends this section by "twenty." here inserting the words "of the United States or."

<sup>3</sup> Section 13 of the act of 1874 here adds the words "or confess

<sup>2</sup> Section 13 of the act of judgment."

or persons who are or may be liable for him as indorsers, bail, sureties, or otherwise, or with the intent, by such disposition of his property, to defeat or delay the operation of this act;<sup>1</sup> or who, being a banker,<sup>2</sup> merchant, or trader, has

<sup>1</sup>The act of June 22, 1874 (18 St. L. 180, § 12), amends this section by inserting the following in lieu of the balance of this paragraph: "Or who being a bank, banker, broker, merchant, trader, manufacturer, or miner, has fraudulently stopped payment, or who, being a bank, banker, broker, merchant, trader, manufacturer, or miner, has stopped or suspended and not resumed payment, within a period of forty days, of his commercial paper (made or passed in the course of his business as such), or who, being a bank or banker, shall fail for forty days to pay any depositor upon demand of payment lawfully made, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt on the petition of one or more of his creditors, who shall constitute one-fourth thereof, at least, in number, and the aggregate of whose debts provable under this act amounts to at least one-third of the debts so provable: *Provided*, That such petition is brought within six months after such act of bankruptcy shall have been committed." [The act of July 26, 1876 (19 St. L. 102), here inserts a provision to the effect that an assignment made by a debtor of all his property, in good faith, for the benefit of his creditors, without creating a preference

and valid under the state laws, shall not be a bar to the discharge of such debtor.] "And the provisions of this section shall apply to all cases of compulsory or involuntary bankruptcy commenced since the first day of December, eighteen hundred and seventy-three, as well as to those commenced hereafter. And in all cases commenced since the first day of December, eighteen hundred and seventy-three, and prior to the passage of this act, as well as those commenced hereafter, the court shall, if such allegation as to the number or amount of petitioning creditors be denied by the debtor, by a statement in writing to that effect, require him to file in court forthwith a full list of his creditors, with their places of residence and the sums due them respectively, and shall ascertain, upon reasonable notice to the creditors, whether one-fourth in number and one-third in amount thereof, as aforesaid, have petitioned that the debtor be adjudged a bankrupt. But if such debtor shall, on the filing of the petition, admit in writing that the requisite number and amount of creditors have petitioned, the court (if satisfied that the admission was made in good faith) shall so adjudge, which judgment shall be final, and the matter proceed without further steps on that subject. And if

<sup>2</sup>The act of July 14, 1870 (16 St. L. 276, § 2), amends this clause by

adding the words "broker, manufacturer or miner."

fraudulently stopped or suspended and not resumed payment of his commercial paper, within a period of fourteen days, shall be deemed to have committed an act of bankruptcy, and, subject to the conditions hereinafter prescribed, shall be adjudged a bankrupt, on the petition of one or more of his creditors, the aggregate of whose debts provable under this act amount to at least two hundred and fifty dollars, provided such petition is brought within six months after the act of bankruptcy shall have been committed. And if such person shall be adjudged a bankrupt, the assignee may

it shall appear that such number and amount have not so petitioned, the court shall grant reasonable time, not exceeding, in cases heretofore commenced, twenty days, and, in cases hereafter commenced, ten days, within which other creditors may join in such petition. And if, at the expiration of such time so limited, the number and amount shall comply with the requirements of this section, the matter of bankruptcy may proceed; but if, at the expiration of such limited time, such number and amount shall not answer the requirements of this section, the proceedings shall be dismissed, and, in cases hereafter commenced, with costs. And if such person shall be adjudged a bankrupt, the assignee may recover back the money or property so paid, conveyed, sold, assigned, or transferred contrary to this act: *Provided*, That the person receiving such payment or conveyance had reasonable cause to believe that the debtor was insolvent, and knew that a fraud on this act was intended; and such person, if a creditor, shall not, in cases of actual fraud on his part, be al-

lowed to prove for more than a moiety of his debt; and this limitation on the proof of debts shall apply to cases of voluntary as well as involuntary bankruptcy. And the petition of creditors under this section may be sufficiently verified by the oaths of the first five signers thereof, if so many there be. And if any of said first five signers shall not reside in the district in which such petition is to be filed, the same may be signed and verified by the oath or oaths of the attorney or attorneys, agent or agents, of such signers. And in computing the number of creditors, as aforesaid, who shall join in such petition, creditors whose respective debts do not exceed two hundred and fifty dollars shall not be reckoned. But if there be no creditors whose debts exceed said sum of two hundred and fifty dollars, or if the requisite number of creditors holding debts exceeding two hundred and fifty dollars fail to sign the petition, the creditors having debts of a less amount shall be reckoned for the purposes aforesaid."

recover back the money or other property so paid, conveyed, sold, assigned, or transferred contrary to this act, provided the person receiving such payment or conveyance had reasonable cause to believe that a fraud on this act was intended, or<sup>1</sup> that the debtor was insolvent, and such creditor shall not be allowed to prove his debt in bankruptcy.

SEC. 40. *And be it further enacted*, That upon the filing of the petition authorized by the next preceding section, if it shall appear that sufficient grounds exist therefor, the court shall direct the entry of an order requiring the debtor to appear and show cause, at a court of bankruptcy to be holden at a time to be specified in the order, not less than five days from the service thereof, why the prayer of the petition should not be granted; and may also, by its injunctions, restrain the debtor, and any other person, in the meantime, from making any transfer or disposition of any part of the debtor's property not excepted by this act from the operation thereof and from any interference therewith; and if it shall appear that there is probable cause for believing that the debtor is about to leave the district, or to remove or conceal his goods and chattels or his evidence of property, or make any fraudulent conveyance or disposition thereof, the court may issue a warrant to the marshal of the district, commanding him to arrest the alleged [bankrupt] and him safely keep, unless he shall give bail to the satisfaction of the court for his appearance from time to time, as required by the court, until the decision of the court upon the petition or the further order of the court, and forthwith to take possession provisionally of all the property and effects of the debtor, and safely keep the same until the further order of the court. A copy of the petition and of such order to show cause shall be served on such debtor by delivering the same to him personally, or leaving the same at his last or usual place of abode; or, if such debtor cannot be found, or his place of residence ascertained, service shall be made by publication

<sup>1</sup> By the act of July 27, 1868 (15 St. L. 228, § 2), this word "or" is changed to "and."

in such manner as the judge may direct. No further proceedings, unless the debtor appear and consent thereto, shall be had until proof shall have been given, to the satisfaction of the court, of such service or publication; and if such proof be not given on the return day of such order, the proceedings shall be adjourned and an order made that the notice be forthwith so served or published.<sup>1</sup>

SEC. 41. *And be it further enacted*, That on such return day or adjourned day, if the notice has been fully served or published, or shall be waived by the appearance and consent of the debtor, the court shall proceed summarily to hear the allegations of the petitioner and debtor, and may adjourn the proceedings from time to time, on good cause shown, and shall, if the debtor on the same day so demand in writing, order a trial by jury at the first term of the court at which a jury shall be in attendance, to ascertain the fact of such alleged bankruptcy;<sup>2</sup> and if upon such hearing or trial,

<sup>1</sup>The act of June 22, 1874 (18 St. L. 182, § 13), amends this section by adding at the end thereof the following words: "And if, on the return-day of the order to show cause as aforesaid, the court shall be satisfied that the requirement of section thirty-nine of said act as to the number and amount of petitioning creditors has been complied with, or if, within the time provided for in section thirty-nine of this act, creditors sufficient in number and amount shall sign such petition so as to make a total of one-fourth in number of the creditors and one-third in the amount of the provable debts against the bankrupt, as provided in said section, the court shall so adjudge, which judgment shall be final; otherwise it shall dismiss the proceedings, and, in cases hereafter commenced, with costs."

<sup>2</sup>The act of June 22, 1874 (18 St. L. 182, § 14), amends this section by striking out all of said section after the word "bankruptcy" and inserting the words, "Or, at the election of the debtor, the court may, in its discretion, award a *venire facias* to the marshal of the district, returnable within ten days before him for the trial of the facts set forth in his petition, at which time the trial shall be had, unless adjourned for cause. And unless, upon such hearing or trial, it shall appear to the satisfaction of said court, or of the jury, as the case may be, that the facts set forth in said petition are true, or if it shall appear that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens was the sole ground of the proceeding, the proceeding shall be dismissed, and the respondent shall recover costs; and

the debtor proves to the satisfaction of the court or of the jury, as the case may be, that the facts set forth in the petition are not true, or that the debtor has paid and satisfied all liens upon his property, in case the existence of such liens were the sole ground of the proceeding, the proceedings shall be dismissed and the respondent shall recover costs.

SEC. 42. *And be it further enacted*, That if the facts set forth in the petition are found to be true, or if default be made by the debtor to appear pursuant to the order, upon due proof of service thereof being made, the court shall adjudge the debtor to be a bankrupt, and, as such, subject to the provisions of this act, and shall forthwith issue a warrant to take possession of the estate of the debtor. The warrant shall be directed, and the property of the debtor shall be taken thereon, and shall be assigned and distributed in the same manner and with similar proceedings to those hereinbefore provided for the taking possession, assignment, and distribution of the property of the debtor upon his own petition. The order of adjudication of bankruptcy shall require the bankrupt forthwith, or within such number of days, not exceeding five after the date of the order or notice thereof, as shall by the order be prescribed, to make and deliver, or transmit by mail, post-paid, to the messenger, a schedule of the creditors and an inventory<sup>1</sup> of his estate in the form and verified in the manner required of a petitioning debtor by section<sup>2</sup> thirteen. If the debtor has failed to

all proceedings in bankruptcy may be discontinued on reasonable notice and hearing, with the approval of the court, and upon the assent, in writing, of such debtor, and not less than one-half of his creditors in number and amount; or, in case all the creditors and such debtor assent thereto, such discontinuance shall be ordered and entered; and all parties shall be remitted, in either case, to the same rights and duties existing at the date of the filing of the petition for bank-

ruptcy, except so far as such estate shall have been already administered and disposed of. And the court shall have power to make all needful orders and decrees to carry the foregoing provision into effect."

<sup>1</sup> The act of June 22, 1874 (18 St. L. 182, § 15), adds the words "and valuation," after the word "inventory."

<sup>2</sup> The act of July 27, 1863 (15 St. L. 228, § 2), changes the word "thirteen" to "eleven."

appear in person, or by attorney, a certified copy of the adjudication shall be forthwith served on him by delivery or publication in the manner hereinbefore provided for the service of the order to show cause; and if the bankrupt is absent or cannot be found, such schedule and inventory shall be prepared by the messenger and the assignee from the best information they can obtain. If the petitioning creditor shall not appear and proceed on the return day, or adjourned day, the court may, upon the petition of any other creditor, to the required amount, proceed to adjudicate on such petition, without requiring a new service or publication of notice to the debtor.

#### OF SUPERSEDING THE BANKRUPT PROCEEDINGS BY ARRANGEMENT.

SEC. 43. *And be it further enacted,* That if at the first meeting of creditors, or at any meeting of creditors to be specially called for that purpose, and of which previous notice shall have been given for such length of time and in such manner as the court may direct, three fourths in value of the creditors whose claims have been proved shall determine and resolve that it is for the interest of the general body of the creditors that the estate of the bankrupt should be wound up and settled, and distribution made among the creditors by trustees, under the inspection and direction of a committee of the creditors, it shall be lawful for the creditors to certify and report such resolution to the court, and to nominate one or more trustees to take and hold and distribute the estate, under the direction of such committee. If it shall appear to the court, after hearing the bankrupt and such creditors as may desire to be heard, that the resolution was duly passed, and that the interests of the creditors will be promoted thereby, it shall confirm the same; and upon the execution and filing, by or on behalf of three fourths in value of all the creditors whose claims have been proved, of a consent that the estate of the bankrupt be wound up and settled

by said trustees according to the terms of such resolution, the bankrupt, or his assignee in bankruptcy, if appointed, as the case may be, shall, under the direction of the court, and under oath, convey, transfer, and deliver all the property and estate of the bankrupt to the said trustee or trustees, who shall, upon such conveyance and transfer, have and hold the same in the same manner, and with the same powers and rights, in all respects, as the bankrupt would have had or held the same if no proceedings in bankruptcy had been taken, or as the assignee in bankruptcy would have done had such resolution not been passed; and such consent and the proceedings thereunder shall be as binding in all respects on any creditor whose debt is provable, who has not signed the same, as if he had signed it, and on any creditor whose debt, if provable, is not proved, as if he had proved it; and the court, by order, shall direct all acts and things needful to be done to carry into effect such resolution of the creditors, and the said trustees shall proceed to wind up and settle the estate under the direction and inspection of such committee of the creditors, for the equal benefit of all such creditors, and the winding up and settlement of any estate under the provisions of this section shall be deemed to be proceedings in bankruptcy under this act; and the said trustees shall have all the rights and powers of assignees in bankruptcy. The court, on the application of such trustees, shall have power to summon and examine, *or* [on] oath or otherwise, the bankrupt and any creditor, and any person indebted to the estate, or known or suspected of having any of the estate in his possession, or any other person whose examination may be material or necessary to aid the trustees in the execution of their trust, and to compel the attendance of such persons and the production of books and papers in the same manner as in other proceedings in bankruptcy under this act; and the bankrupt shall have the like right to apply for and obtain a discharge after the passage of such resolution and the appointment of such trustees as if such resolution had not been passed, and as if all the proceedings had con-



tinued in the manner provided in the preceding sections of this act. If the resolution shall not be duly reported, or the consent of the creditors shall not be duly filed, or if, upon its filing, the court shall not think fit to approve thereof, the bankruptcy shall proceed as though no resolution had been passed, and the court may make all necessary orders for resuming the proceedings. And the period of time which shall have elapsed between the date of the resolution and the date of the order for assuming proceedings shall not be reckoned in calculating periods of time prescribed by this act.<sup>1</sup>

<sup>1</sup> The act of June 22, 1874 (18 St. L. 183, § 17), here adds the following provisions: That in all cases of bankruptcy now pending, or to be hereafter pending, by or against any person, whether an adjudication in bankruptcy shall have been had or not, the creditors of such alleged bankrupt may, at a meeting called under the direction of the court, and upon not less than ten days' notice to each known creditor of the time, place and purpose of such meeting, such notice to be personal or otherwise, as the court may direct, resolve that a composition proposed by the debtor shall be accepted in satisfaction of the debts due to them from the debtor. And such resolution shall, to be operative, have been passed by a majority in number and three-fourths in value of the creditors of the debtor assembled at such meeting either in person or by proxy, and shall be confirmed by the signatures thereto of the debtor and two-thirds in number and one-half in value of all the creditors of the debtor. And in calculating a majority for the purposes of a composition under this section, credit-

ors whose debts amount to sums not exceeding \$50 shall be reckoned in the majority in value, but not in the majority in number; and the value of the debts of secured creditors above the amount of such security, to be determined by the court, shall, as nearly as circumstances admit, be estimated in the same way. And creditors whose debts are fully secured shall not be entitled to vote upon or sign such resolution without first relinquishing such security for the benefit of the estate.

The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the same, and shall answer any inquiries made of him; and he, or, if he is so prevented from being at such meeting, some one in his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due.

Such resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the court; and the court

## PENALTIES AGAINST BANKRUPTS.

SEC. 44. *And be it further enacted*, That from and after the passage of this act if any debtor or bankrupt shall, after the commencement of proceedings in bankruptcy, secrete or conceal any property belonging to his estate, or part with, conceal, or destroy, alter, mutilate, or falsify, or cause to be

shall, upon notice to all the creditors of the debtor of not less than five days, and upon hearing, inquire whether such resolution has been passed in the manner directed by this section; and if satisfied that it has been so passed, it shall, subject to the provisions hereinafter contained, and upon being satisfied that the same is for the best interest of all concerned, cause such resolution to be recorded and statement of assets and debts to be filed; and until such record and filing shall have taken place, such resolution shall be of no validity. And any creditor of the debtor may inspect such record and statement at all reasonable times.

The creditors may, by resolution passed in the manner and under the circumstances aforesaid, add to, or vary the provisions of, any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation. And any such additional resolution shall be presented to the court in the same manner, and proceeded with in the same way, and with the same consequences, as the resolution by which the composition was accepted in the first instance. The provisions of a composition accepted by such resolution in pursu-

ance of this section shall be binding on all the creditors whose names and addresses and the amounts of the debts due to whom are shown in the statement of the debtor produced at the meeting at which the resolution shall have been passed, but shall not affect or prejudice the rights of any other creditors.

Where a debt arises on a bill of exchange or promissory note, if the debtor shall be ignorant of the holder of any such bill of exchange or promissory note, he shall be required to state the amount of such bill or note, the date on which it falls due, the names of the acceptor and of the person to whom it is payable, and any other particulars within his knowledge respecting the same; and the insertion of such particulars shall be deemed a sufficient description by the debtor in respect to such debt.

Any mistake made inadvertently by a debtor in the statement of his debts may be corrected upon reasonable notice, and with the consent of a general meeting of his creditors.

Every such composition shall, subject to priorities declared in said act, provide for a *pro rata* payment or satisfaction, in money, to the creditors of such debtor in proportion to the amount of their unsecured debts, or their debts in re-

concealed, destroyed, altered, mutilated, or falsified, any book, deed, document, or writing relating thereto, or remove, or cause to be removed, the same or any part thereof out of the district, or otherwise dispose of any part thereof, with intent to prevent it from coming into the possession of the assignee in bankruptcy, or to hinder, impede, or delay either of them in recovering or receiving the same, or make any payment, gift, sale, assignment, transfer, or conveyance of any property belonging to his estate with the like intent, or spends any part thereof in gaming; or shall, with intent to defraud, wilfully and fraudulently conceal from his assignee or omit from his schedule any property or effects whatsoever; or if, in case of any person having, to his knowledge or belief, proved a false or fictitious debt against his estate, he shall fail to disclose the same to his assignee within one month after coming to the knowledge or belief thereof; or shall attempt to account for any of his property by fictitious losses or expenses; or shall, within three months before the commencement of proceedings in bankruptcy, under the false color and pretense of carrying on business and dealing in

spect to which any such security shall have been duly surrendered and given up.

The provisions of any composition made in pursuance of this section may be enforced by the court, on motion made in a summary manner by any person interested, and on reasonable notice; and any disobedience of the order of the court made on such motion shall be deemed to be a contempt of court. Rules and regulations of court may be made in relation to proceedings of composition herein provided for in the same manner and to the same extent as now provided by law in relation to proceedings in bankruptcy.

If it shall at any time appear to

the court, on notice, satisfactory evidence and hearing, that a composition under this section cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may refuse to accept and confirm such composition, or may set the same aside; and, in either case, the debtor shall be proceeded with as a bankrupt in conformity with the provisions of law, and proceedings may be had accordingly; and the time during which such composition shall have been in force shall not, in such case, be computed in calculating periods of time prescribed by said act.

the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud; or shall, with intent to defraud his creditors, within three months next before the commencement of proceedings in bankruptcy, pawn, pledge, or dispose of, otherwise than by bona fide transactions in the ordinary way of his trade, any of his goods or chattels which have been obtained on credit and remain unpaid for, he shall be deemed guilty of a misdemeanor, and, upon conviction thereof in any court of the United States, shall be punished by imprisonment, with or without hard labor, for a term not exceeding three years.

#### PENALTIES AGAINST OFFICERS.

SEC. 45. *And be it further enacted*, That if any judge, register, clerk, marshal, messenger, assignee, or any other officer of the several courts of bankruptcy shall, for anything done or pretended to be done under this act, or under color of doing anything thereunder, wilfully demand or take, or appoint or allow any person whatever to take for him or on his account, or for or on account of any other person, or in trust for him or for any other person, any fee, emolument, gratuity, sum of money, or anything of value whatever, other than is allowed by this act, or which shall be allowed under the authority thereof, such person, when convicted thereof, shall forfeit and pay the sum of not less than three hundred dollars and not exceeding five hundred dollars, and be imprisoned not exceeding three years.

SEC. 46. *And be it further enacted*, That if any person shall forge the signature of a judge, register, or other officer of the court, or shall forge or counterfeit the seal of the courts, or knowingly concur in using any such forged or counterfeit signature or seal for the purpose of authenticating any proceeding or document, or shall tender in evidence any such proceeding or document with a false or counterfeit signature of any such judge, register, or other officer, or a false or counterfeit seal of the court, subscribed or attached thereto, know-

ing such signature or seal to be false or counterfeit, any such person shall be guilty of felony, and upon conviction thereof shall be liable to a fine of not less than five hundred dollars, and not more than five thousand dollars, and to be imprisoned not exceeding five years, at the discretion of the court.

#### FEES AND COSTS.

SEC. 47.<sup>1</sup> *And be it further enacted*, That in each case there shall be allowed and paid, in addition to the fees of the clerk of the court as now established by law, or as may be established by general order, under the provisions of this act, for fees in bankruptcy, the following fees, which shall be applied to the payment for the services of the registers:—

For issuing every warrant, two dollars.

For each day in which a meeting is held, three dollars.

For each order for a dividend, three dollars.

For every order substituting an arrangement by trust deed for bankruptcy, two dollars.

For every bond with sureties, two dollars.

For every application for any meeting in any matter under this act, one dollar.

<sup>1</sup>The act of June 22, 1874 (18 St. L. 184, § 18), makes the following amendment of this section: "That from and after the passage of this act the fees, commissions, charges, and allowances, excepting actual and necessary disbursements, of, and to be made by the officers, agents, marshals, messengers, assignees, and registers in cases of bankruptcy, shall be reduced to one-half of the fees, commissions, charges, and allowances heretofore provided for or made in like cases: *Provided*, That the preceding provision shall be and remain in force until the justices of the Supreme Court of the United States shall

make and promulgate new rules and regulations in respect to the matters aforesaid, under the powers conferred upon them by sections ten and forty-seven of said act, and no longer, which duties they shall perform, as soon as may be. And said justices shall have power under said sections, by general regulations, to simplify and, so far as in their judgment will conduce to the benefit of creditors, to consolidate the duties of the register, assignee, marshal, and clerk, and to reduce fees, costs, and charges, to the end that prolixity, delay, and unnecessary expense may be avoided."

For every day's service while actually employed under a special order of the court, a sum not exceeding five dollars, to be allowed by the court.

For taking depositions the fees now allowed by law.

For every discharge when there is no opposition, two dollars.

Such fees shall have priority of payment over all other claims out of the estate, and, before a warrant issues, the petitioner shall deposit<sup>1</sup> with the senior register of the court, or with the clerk, to be delivered to the register, fifty dollars as security for the payment thereof; and if there are not sufficient assets for the payment of the fees, the person upon whose petition the warrant is issued, shall pay the same, and the court may issue an execution against him to compel payment to the register.

Before any dividend is ordered, the assignee shall pay out of the estate to the messenger the following fees, and no more:—

First. For service of warrant, two dollars.

Second. For all necessary travel, at the rate of five cents a mile each way.

Third. For each written note to creditor named in the schedule, ten cents.

Fourth. For custody of property, publication of notices, and other services, his actual and necessary expenses upon returning the same in specific items, and making oath that they have been actually incurred and paid by him, and are just and reasonable, the same to be taxed or adjusted by the court, and the oath of the messenger shall not be conclusive as to the necessity of said expenses.

For cause shown, and upon hearing thereon, such further allowance may be made as the court, in its discretion, may determine.

The enumeration of the foregoing fees shall not prevent

<sup>1</sup>The act of July 27, 1868, (15 St. L. 223, § 2), amends this section by omitting the words "with the senior register or" and "to be delivered to the register."

the judges, who shall frame general rules and orders in accordance with the provisions of section ten, from prescribing a tariff of fees for all other services of the officers of courts of bankruptcy, or from reducing the fees prescribed in this section in classes of cases to be named in their rules and orders.

#### OF MEANING OF TERMS AND COMPUTATION OF TIME.

SEC. 48. *And be it further enacted*, That the word "assignee" and the word "creditor" shall include the plural also; and the word "messenger" shall include his assistant or assistants, except in the provision for the fees of that officer. The word "marshal" shall include the marshal's deputies; the word "person" shall also include "corporation;" and the word "oath" shall include "affirmation." And in all cases in which any particular number of days is prescribed by this act, or shall be mentioned in any rule or order of court or general order which shall at any time be made under this act, for the doing of any act, or for any other purpose, the same shall be reckoned, in the absence of any expression to the contrary, exclusive of the first, and inclusive of the last day, unless the last day shall fall on a Sunday, Christmas day, or on any day appointed by the President of the United States as a day of public fast or thanksgiving, or on the fourth of July, in which case the time shall be reckoned exclusive of that day also.

SEC. 49. *And be it further enacted*, That all the jurisdiction, power, and authority conferred upon and vested in the District Court of the United States by this act in cases in bankruptcy are hereby conferred upon and vested in the Supreme Court of the District of Columbia, and in and upon the<sup>1</sup> supreme courts of the several Territories of the United States,<sup>2</sup> when the bankrupt resides in the said District of

<sup>1</sup> The act of June 22, 1874 (18 St. L. 183), § 16, amends this section by substituting the words "District Court" in lieu of "Supreme Courts." 1874 inserts here the words "subject to the general superintendence and jurisdiction conferred upon circuit courts by section two of

<sup>2</sup> Section 16 of the above act of said act."

Columbia or in either of the said Territories. And in those judicial districts which are not within any organized circuit of the United States, the power and jurisdiction of a circuit court in bankruptcy may be exercised by the district judge.

Sec. 50. *And be it further enacted*, That this act shall commence and take effect as to the appointment of the officers created hereby, and the promulgation of rules and general orders, from and after the date of its approval: *Provided*, That no petition or other proceeding under this act shall be filed, received, or commenced before the first day of June, Anno Domini, eighteen hundred and sixty-seven.

Approved, March 2, 1867.



## TITLE IV.

### THE NATIONAL BANKRUPTCY LAW OF 1898.

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AN ACT to establish a uniform system of bankruptcy throughout the United States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### CHAPTER I.

##### DEFINITIONS.

**SECTION 1. MEANING OF WORDS AND PHRASES.**—*a.* The words and phrases used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows: (1) "A person against whom a petition has been filed" shall include a person who has filed a voluntary petition; (2) "adjudication" shall mean the date of the entry of a decree that the defendant, in a bankruptcy proceeding, is a bankrupt, or if such decree is appealed from, then the date when such decree is finally confirmed; (3) "appellate courts" shall include the circuit courts of appeals of the United States, the supreme courts of the Territories, and the Supreme Court of the United States; (4) "bankrupt" shall include a person against whom an involuntary petition or an application to set a composition aside or to revoke a discharge has been filed, or who has filed a voluntary petition, or who has been adjudged a bankrupt; (5) "clerk" shall mean the clerk of a court of bankruptcy; (6) "corporations" shall mean all bodies having any of the powers and privileges of private corporations not possessed by individuals or partnerships, and shall include limited or other partnership associations organized under laws making the capital subscribed alone responsible for the debts of the association; (7) "court" shall mean the court of bankruptcy in which the proceedings are pending, and may include the referee; (8) "courts of bankruptcy" shall include the district courts of the United States and of the Territories, the supreme court of the District of Columbia, and the United States court of the Indian Territory, and of Alaska; (9) "creditor" shall include anyone who owns a demand or claim provable in bankruptcy, and may include his duly authorized agent, attorney, or proxy; (10) "date

of bankruptcy," or "time of bankruptcy," or "commencement of proceedings," or "bankruptcy," with reference to time, shall mean the date when the petition was filed; (11) "debt" shall include any debt, demand, or claim provable in bankruptcy; (12) "discharge" shall mean the release of a bankrupt from all of his debts which are provable in bankruptcy, except such as are excepted by this Act; (13) "document" shall include any book, deed, or instrument in writing; (14) "holiday" shall include Christmas, the Fourth of July, the Twenty-second of February, and any day appointed by the President of the United States or the Congress of the United States as a holiday or as a day of public fasting or thanksgiving; (15) a person shall be deemed insolvent within the provisions of this Act whenever the aggregate of his property, exclusive of any property which he may have conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, with intent to defraud, hinder or delay his creditors, shall not, at a fair valuation, be sufficient in amount to pay his debts; (16) "judge" shall mean a judge of a court of bankruptcy, not including the referee; (17) "oath" shall include affirmation; (18) "officer" shall include clerk, marshal, receiver, referee, and trustee, and the imposing of a duty upon or the forbidding of an act by any officer shall include his successor and any person authorized by law to perform the duties of such officer; (19) "persons" shall include corporations, except where otherwise specified, and officers, partnerships, and women, and when used with reference to the commission of acts which are herein forbidden shall include persons who are participants in the forbidden acts, and the agents, officers, and members of the board of directors or trustees, or other similar controlling bodies of corporations; (20) "petition" shall mean a paper filed in a court of bankruptcy or with a clerk or deputy clerk by a debtor praying for the benefits of this Act, or by creditors alleging the commission of an act of bankruptcy by a debtor therein named; (21) "referee" shall mean the referee who has jurisdiction of the case or to whom the case has been referred, or anyone acting in his stead; (22) "conceal" shall include secrete, falsify, and mutilate; (23) "secured creditor" shall include a creditor who has security for his debt upon the property of the bankrupt of a nature to be assignable under this Act, or who owns such a debt for which some indorser, surety, or other persons secondarily liable for the bankrupt has such security upon the bankrupt's assets; (24) "States" shall include the Territories, the Indian Territory, Alaska, and the District of Columbia; (25) "transfer" shall include the sale and every other and different mode of disposing of or parting with property, or the possession of property, absolutely or conditionally, as a payment, pledge, mortgage, gift, or security; (26) "trustee" shall include all of the trustees of an estate; (27) "wage-earner" shall mean an individual who works for wages, salary, or hire, at a rate of compensation not exceeding one thousand five hundred dollars per year;

(28) words importing the masculine gender may be applied to and include corporations, partnerships, and women; (29) words importing the plural number may be applied to and mean only a single person or thing; (30) words importing the singular number may be applied to and mean several persons or things.

## CHAPTER II.

### CREATION OF COURTS OF BANKRUPTCY AND THEIR JURISDICTION.

SEC. 2. That the courts of bankruptcy as hereinbefore defined, viz, the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharg-

ing the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated.

### CHAPTER III.

#### BANKRUPTS.

SEC. 3. ACTS OF BANKRUPTCY.—*a.* Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or (2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or (3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or (4) made a general assignment for the benefit of his creditors; or (5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground.

*b.* A petition may be filed against a person who is insolvent and who has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment

when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

c. It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this Act at the time of the filing the petition against him, and if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

d. Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

e. Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond.

SEC. 4. WHO MAY BECOME BANKRUPTS.—a. Any person who owes debts, except a corporation, shall be entitled to the benefits of this Act as a voluntary bankrupt.

b. Any natural person, except a wage-earner or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any corporation engaged principally in manufacturing, trading,

printing, publishing, or mercantile pursuits, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this Act. Private bankers, but not national banks or banks incorporated under State or Territorial laws, may be adjudged involuntary bankrupts.

**SEC. 5. PARTNERS.—a.** A partnership, during the continuation of the partnership business, or after its dissolution and before the final settlement thereof, may be adjudged a bankrupt.

b. The creditors of the partnership shall appoint the trustee; in other respects so far as possible the estate shall be administered as herein provided for other estates.

c. The court of bankruptcy which has jurisdiction of one of the partners may have jurisdiction of all the partners and of the administration of the partnership and individual property.

d. The trustee shall keep separate accounts of the partnership property and of the property belonging to the individual partners.

e. The expenses shall be paid from the partnership property and the individual property in such proportions as the court shall determine.

f. The net proceeds of the partnership property shall be appropriated to the payment of the partnership debts, and the net proceeds of the individual estate of each partner to the payment of his individual debts. Should any surplus remain of the property of any partner after paying his individual debts, such surplus shall be added to the partnership assets and be applied to the payment of the partnership debts. Should any surplus of the partnership property remain after paying the partnership debts, such surplus shall be added to the assets of the individual partners in the proportion of their respective interests in the partnership.

g. The court may permit the proof of the claim of the partnership estate against the individual estates, and vice versa, and may marshal the assets of the partnership estate and individual estates so as to prevent preferences and secure the equitable distribution of the property of the several estates.

h. In the event of one or more but not all of the members of a partnership being adjudged bankrupt, the partnership property shall not be administered in bankruptcy, unless by consent of the partner or partners not adjudged bankrupt; but such partner or partners not adjudged bankrupt shall settle the partnership business as expeditiously as its nature will permit, and account for the interest of the partner or partners adjudged bankrupt.

**SEC. 6. EXEMPTIONS OF BANKRUPTS.—a.** This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

**SEC. 7. DUTIES OF BANKRUPTS.—***a.* The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed; (2) comply with all lawful orders of the court; (3) examine the correctness of all proofs of claims filed against his estate; (4) execute and deliver such papers as shall be ordered by the court; (5) execute to his trustee transfers of all his property in foreign countries; (6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this Act, coming to his knowledge; (7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee; (8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and (9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

*Provided, however,* That he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence.

**SEC. 8. DEATH OR INSANITY OF BANKRUPTS.—***a.* The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible, as though he had not died or become insane: *Provided,* That in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the State of the bankrupt's residence.

**SEC. 9. PROTECTION AND DETENTION OF BANKRUPTS.—***a.* A bankrupt shall be exempt from arrest upon civil process except in the following cases: (1) When issued from a court of bankruptcy for contempt or dis-

obedience of its lawful orders; (2) when issued from a State court having jurisdiction, and served within such State, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this Act.

b. The judge may, at any time after the filing of a petition by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

SEC. 10. EXTRADITION OF BANKRUPTS.—*a.* Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

SEC. 11. SUITS BY AND AGAINST BANKRUPTS.—*a.* A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition: if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication, or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

b. The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

c. A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

d. Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed.

SEC. 12. COMPOSITIONS, WHEN CONFIRMED.—*a.* A bankrupt may offer terms of composition to his creditors after, but not before, he has been



examined in open court or at a meeting of his creditors and filed in court the schedule of his property and list of his creditors, required to be filed by bankrupts.

b. An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings, have been deposited in such place as shall be designated by and subject to the order of the judge.

c. A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

d. The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made or procured except as herein provided, or by any means, promises, or acts herein forbidden.

e. Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy, as herein provided.

SEC. 13. COMPOSITIONS, WHEN SET ASIDE.—a. The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

SEC. 14. DISCHARGES, WHEN GRANTED.—a. Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be filed within but not after the expiration of the next six months.

b. The judge shall hear the application for a discharge, and such proofs and pleas as may be made in opposition thereto by parties in interest, at such time as will give parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has (1) committed an offense punishable by imprisonment as herein provided; or (2) with fraudulent

intent to conceal his true financial condition and in contemplation of bankruptcy, destroyed, concealed, or failed to keep books of account or records from which his true condition might be ascertained.

c. The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge.

SEC. 15. DISCHARGES, WHEN REVOKED.—a. The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge.

SEC. 16. CO-DEBTORS OF BANKRUPTS.—a. The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt.

SEC. 17. DEBTS NOT AFFECTED BY A DISCHARGE.—a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as (1) are due as a tax levied by the United States, the State, county, district, or municipality in which he resides; (2) are judgments in actions for frauds, or obtaining property by false pretenses or false representations, or for willful and malicious injuries to the person or property of another; (3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or (4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity.

#### CHAPTER IV.

##### COURTS AND PROCEDURE THEREIN.

SEC. 18. PROCESS, PLEADINGS, AND ADJUDICATIONS.—a. Upon the filing of a petition for involuntary bankruptcy, service thereof, with a writ of subpoena, shall be made upon the person therein named as defendant in the same manner that service of such process is now had upon the commencement of a suit in equity in the courts of the United States, except that it shall be returnable within fifteen days, unless the judge shall for cause fix a longer time; but in case personal service can not be made, then notice shall be given by publication in the same manner and for the same time as provided by law for notice by publication in suits in equity in courts of the United States.

b. The bankrupt, or any creditor, may appear and plead to the petition within ten days after the return day, or within such further time as the court may allow.

c. All pleadings setting up matters of fact shall be verified under oath.

d. If the bankrupt, or any of his creditors, shall appear, within the time limited, and controvert the facts alleged in the petition, the judge shall determine, as soon as may be, the issues presented by the pleadings, without the intervention of a jury, except in cases where a jury trial is given by this Act, and makes the adjudication or dismiss the petition.

e. If on the last day within which pleadings may be filed none are filed by the bankrupt or any of his creditors, the judge shall on the next day, if present, or as soon thereafter as practicable, make the adjudication or dismiss the petition.

f. If the judge is absent from the district, or the division of the district in which the petition is pending, on the next day after the last day on which pleadings may be filed, and none have been filed by the bankrupt or any of his creditors, the clerk shall forthwith refer the case to the referee.

g. Upon the filing of a voluntary petition the judge shall hear the petition and make the adjudication or dismiss the petition. If the judge is absent from the district, or the division of the district in which the petition is filed at the time of the filing, the clerk shall forthwith refer the case to the referee.

SEC. 19. JURY TRIALS.—a. A person against whom an involuntary petition has been filed shall be entitled to have a trial by jury, in respect to the question of his insolvency, except as herein otherwise provided, and any act of bankruptcy alleged in such petition to have been committed, upon filing a written application therefor at or before the time within which an answer may be filed. If such application is not filed within such time, a trial by jury shall be deemed to have been waived.

b. If a jury is not in attendance upon the court, one may be specially summoned for the trial, or the case may be postponed, or, if the case is pending in one of the district courts within the jurisdiction of a circuit court of the United States, it may be certified for trial to the circuit court sitting at the same place, or by consent of parties when sitting at any other place in the same district, if such circuit court has or is to have a jury first in attendance.

c. The right to submit matters in controversy, or an alleged offense under this Act, to a jury shall be determined and enjoyed, except as provided by this Act, according to the United States laws now in force or such as may be hereafter enacted in relation to trials by jury.

SEC. 20. OATHS, AFFIRMATIONS.—a. Oaths required by this Act, except upon hearings in court, may be administered by (1) referees; (2) officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken; and (3) diplomatic or consular officers of the United States in any foreign country.

b. Any person conscientiously opposed to taking an oath may, in lieu

thereof, affirm. Any person who shall affirm falsely shall be punished as for the making of a false oath.

**SEC. 21. EVIDENCE.**—*a.* A court of bankruptcy may, upon application of any officer, bankrupt, or creditor, by order require any designated person, including the bankrupt, who is a competent witness under the laws of the State in which the proceedings are pending, to appear in court or before a referee or the judge of any State court, to be examined concerning the acts, conduct, or property of a bankrupt whose estate is in process of administration under this Act.

*b.* The right to take depositions in proceedings under this Act shall be determined and enjoyed according to the United States laws now in force, or such as may be hereafter enacted relating to the taking of depositions, except as herein provided.

*c.* Notice of the taking of depositions shall be filed with the referee in every case. When depositions are to be taken in opposition to the allowance of a claim notice shall also be served upon the claimant, and when in opposition to a discharge notice shall also be served upon the bankrupt.

*d.* Certified copies of proceedings before a referee, or of papers, when issued by the clerk or referee, shall be admitted as evidence with like force and effect as certified copies of the records of district courts of the United States are now or may hereafter be admitted as evidence.

*e.* A certified copy of the order approving the bond of a trustee shall constitute conclusive evidence of the vesting in him of the title to the property of the bankrupt, and if recorded shall impart the same notice that a deed from the bankrupt to the trustee if recorded would have imparted had not bankruptcy proceedings intervened.

*f.* A certified copy of an order confirming or setting aside a composition, or granting or setting aside a discharge, not revoked, shall be evidence of the jurisdiction of the court, the regularity of the proceedings, and of the fact that the order was made.

*g.* A certified copy of an order confirming a composition shall constitute evidence of the revesting of the title of his property in the bankrupt, and if recorded shall impart the same notice that a deed from the trustee to the bankrupt if recorded would impart.

**SEC. 22. REFERENCE OF CASES AFTER ADJUDICATION.**—*a.* After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee or specially with only limited authority to act in the premises or to consider and report upon specified issues; or (2) to any referee within the territorial jurisdiction of the court, if the convenience of parties in interest will be served thereby, or for cause, or if the bankrupt does not do business, reside, or have his domicile in the district.

*b.* The judge may, at any time, for the convenience of parties or for cause, transfer a case from one referee to another.

**SEC. 23. JURISDICTION OF UNITED STATES AND STATE COURTS.—***a.* The United States circuit courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been instituted and such controversies had been between the bankrupts and such adverse claimants.

*b.* Suits by the trustees shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant.

*c.* The United States circuit courts shall have concurrent jurisdiction with the courts of bankruptcy, within their respective territorial limits, of the offenses enumerated in this Act.

**SEC. 24. JURISDICTION OF APPELLATE COURTS.—***a.* The Supreme Court of the United States, the circuit courts of appeals of the United States, and the supreme courts of the Territories, in vacation in chambers and during their respective terms, as now or as they may be hereafter held, are hereby invested with appellate jurisdiction of controversies arising in bankruptcy proceedings from the courts of bankruptcy from which they have appellate jurisdiction in other cases. The Supreme Court of the United States shall exercise a like jurisdiction from courts of bankruptcy not within any organized circuit of the United States and from the supreme court of the District of Columbia.

*b.* The several circuit courts of appeal shall have jurisdiction in equity, either interlocutory or final, to superintend and revise in matter of law the proceedings of the several inferior courts of bankruptcy within their jurisdiction. Such power shall be exercised on due notice and petition by any party aggrieved.

**SEC. 25. APPEALS AND WRITS OF ERROR.—***a.* That appeals, as in equity cases, may be taken in bankruptcy proceedings from the courts of bankruptcy to the circuit court of appeals of the United States, and to the supreme court of the Territories, in the following cases, to wit, (1) from a judgment adjudging or refusing to adjudge the defendant a bankrupt; (2) from a judgment granting or denying a discharge; and (3) from a judgment allowing or rejecting a debt or claim of five hundred dollars or over. Such appeal shall be taken within ten days after the judgment appealed from has been rendered, and may be heard and determined by the appellate court in term or vacation, as the case may be.

*b.* From any final decision of a court of appeals, allowing or rejecting a claim under this Act, an appeal may be had under such rules and within such time as may be prescribed by the Supreme Court of the United States, in the following cases and no other:

1. Where the amount in controversy exceeds the sum of two thousand

dollars, and the question involved is one which might have been taken on appeal or writ of error from the highest court of a State to the Supreme Court of the United States; or

2. Where some Justice of the Supreme Court of the United States shall certify that in his opinion the determination of the question or questions involved in the allowance or rejection of such claim is essential to a uniform construction of this Act throughout the United States.

c. Trustees shall not be required to give bond when they take appeals or sue out writs of error.

d. Controversies may be certified to the Supreme Court of the United States from other courts of the United States, and the former court may exercise jurisdiction thereof and issue writs of certiorari pursuant to the provisions of the United States laws now in force or such as may be hereafter enacted.

SEC. 26. ARBITRATION OF CONTROVERSIES.—a. The trustee may, pursuant to the direction of the court, submit to arbitration any controversy arising in the settlement of the estate.

b. Three arbitrators shall be chosen by mutual consent, or one by the trustee, one by the other party to the controversy, and the third by the two so chosen, or if they fail to agree in five days after their appointment the court shall appoint the third arbitrator.

c. The written finding of the arbitrators, or a majority of them, as to the issues presented, may be filed in court and shall have like force and effect as the verdict of a jury.

SEC. 27. COMPROMISES.—a. The trustee may, with the approval of the court, compromise any controversy arising in the administration of the estate upon such terms as he may deem for the best interests of the estate.

SEC. 28. DESIGNATION OF NEWSPAPERS.—a. Courts of bankruptcy shall by order designate a newspaper published within their respective territorial districts, and in the county in which the bankrupt resides or the major part of his property is situated, in which notices required to be published by this Act and orders which the court may direct to be published shall be inserted. Any court may in a particular case, for the convenience of parties in interest, designate some additional newspaper in which notices and orders in such case shall be published.

SEC. 29. OFFENSES.—a. A person shall be punished, by imprisonment for a period not to exceed five years, upon conviction of the offense of having knowingly and fraudulently appropriated to his own use, embezzled, spent, or unlawfully transferred any property or secreted or destroyed any document belonging to a bankrupt estate which came into his charge as trustee.

b. A person shall be punished, by imprisonment for a period not to exceed two years, upon conviction of the offense of having knowingly and fraudulently (1) concealed while a bankrupt, or after his discharge, from his trustee any of the property belonging to his estate in bank-

ruptcy; or (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or (4) received any material amount of property from a bankrupt after the filing of the petition, with intent to defeat this Act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings.

c. A person shall be punished by fine, not to exceed five hundred dollars, and forfeit his office, and the same shall thereupon become vacant, upon conviction of the offense of having knowingly (1) acted as a referee in a case in which he is directly or indirectly interested; or (2) purchased, while a referee, directly or indirectly, any property of the estate in bankruptcy of which he is referee; or (3) refused, while a referee or trustee, to permit a reasonable opportunity for the inspection of the accounts relating to the affairs of, and the papers and records of, estates in his charge by parties in interest when directed by the court so to do.

d. A person shall not be prosecuted for any offense arising under this Act unless the indictment is found or the information is filed in court within one year after the commission of the offense.

SEC. 30. RULES, FORMS, AND ORDERS.—a. All necessary rules, forms, and orders as to procedure and for carrying this Act into force and effect shall be prescribed, and may be amended from time to time, by the Supreme Court of the United States.

SEC. 31. COMPUTATION OF TIME.—a. Whenever time is enumerated by days in this Act, or in any proceeding in bankruptcy, the number of days shall be computed by excluding the first and including the last, unless the last fall on a Sunday or holiday, in which event the day last included shall be the next day thereafter which is not a Sunday or a legal holiday.

SEC. 32. TRANSFER OF CASES.—a. In the event petitions are filed against the same person, or against different members of a partnership, in different courts of bankruptcy each of which has jurisdiction, the cases shall be transferred, by order of the courts relinquishing jurisdiction, to and be consolidated by the one of such courts which can proceed with the same for the greatest convenience of parties in interest.

## CHAPTER V.

### OFFICERS, THEIR DUTIES AND COMPENSATION.

SEC. 33. CREATION OF TWO OFFICES.—a. The offices of referee and trustee are hereby created.

SEC. 34. APPOINTMENT, REMOVAL, AND DISTRICTS OF REFEREES.—a. Courts of bankruptcy shall, within the territorial limits of which they

respectively have jurisdiction, (1) appoint referees, each for a term of two years, and may, in their discretion, remove them because their services are not needed or for other cause; and (2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district.

SEC. 35. QUALIFICATIONS OF REFEREES.—*a.* Individuals shall not be eligible to appointment as referees unless they are respectively (1) competent to perform the duties of that office; (2) not holding any office of profit or emolument under the laws of the United States or of any State other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public; (3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and (4) residents of, or have their offices in, the territorial districts for which they are to be appointed.

SEC. 36. OATHS OF OFFICE OF REFEREES.—*a.* Referees shall take the same oath of office as that prescribed for judges of United States courts.

SEC. 37. NUMBER OF REFEREES.—*a.* Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy.

SEC. 38. JURISDICTION OF REFEREES.—*a.* Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

SEC. 39. DUTIES OF REFEREES.—*a.* Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends



declared and to whom payable; (2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended; (3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest; (4) give notices to creditors as herein provided; (5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges; (6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts, or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so; (7) safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded; (8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or, if it be impracticable to transmit the original papers, transmit certified copies thereof by mail; (9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and (10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

b. Referees shall not (1) act in cases in which they are directly or indirectly interested; (2) practice as attorneys and counselors at law in any bankruptcy proceedings; or (3) purchase, directly or indirectly, any property of an estate in bankruptcy.

SEC. 40. COMPENSATION OF REFEREES.—a. Referees shall receive as full compensation for their services, payable after they are rendered, a fee of ten dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which have been administered before them one per centum commissions on sums to be paid as dividends and commissions, or one half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

b. Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

c. In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee.

SEC. 41. CONTEMPTS BEFORE REFEREES.—a. A person shall not, in proceedings before a referee, (1) disobey or resist any lawful order, process,

or writ; (2) misbehave during a hearing or so near the place thereof as to obstruct the same; (3) neglect to produce, after having been ordered to do so, any pertinent document; or (4) refuse to appear after having been subpoenaed, or, upon appearing, refuse to take the oath as a witness, or, after having taken the oath, refuse to be examined according to law: *Provided*, That no person shall be required to attend as a witness before a referee at a place outside of the State of his residence, and more than one hundred miles from such place of residence, and only in case his lawful mileage and fee for one day's attendance shall be first paid or tendered to him.

b. The referee shall certify the facts to the judge, if any person shall do any of the things forbidden in this section. The judge shall thereupon, in a summary manner, hear the evidence as to the acts complained of, and, if it is such as to warrant him in so doing, punish such person in the same manner and to the same extent as for a contempt committed before the court of bankruptcy, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of, or in the presence of, the court.

SEC. 42. RECORDS OF REFEREES.—*a.* The records of all proceedings in each case before a referee shall be kept as nearly as may be in the same manner as records are now kept in equity cases in circuit courts of the United States.

b. A record of the proceedings in each case shall be kept in a separate book or books, and shall, together with the papers on file, constitute the records of the case.

c. The book or books containing a record of the proceedings shall, when the case is concluded before the referee, be certified to by him, and, together with such papers as are on file before him, be transmitted to the court of bankruptcy and shall there remain as a part of the records of the court.

SEC. 43. REFEREE'S ABSENCE OR DISABILITY.—*a.* Whenever the office of a referee is vacant, or its occupant is absent or disqualified to act, the judge may act, or may appoint another referee, or another referee holding an appointment under the same court may, by order of the judge, temporarily fill the vacancy.

SEC. 44. APPOINTMENT OF TRUSTEES.—*a.* The creditors of a bankrupt estate shall, at their first meeting after the adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not appoint a trustee or trustees as herein provided, the court shall do so.

SEC. 45. QUALIFICATIONS OF TRUSTEES.—*a.* Trustees may be (1) individuals who are respectively competent to perform the duties of that office, and reside or have an office in the judicial district within which

they are appointed, or (2) corporations authorized by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

**SEC. 46. DEATH OR REMOVAL OF TRUSTEES.**—*a.* The death or removal of a trustee shall not abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor.

**SEC. 47. DUTIES OF TRUSTEES.**—*a.* Trustees shall respectively (1) account for and pay over to the estates under their control all interest received by them upon property of such estates; (2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; (3) deposit all money received by them in one of the designated depositories; (4) disburse money only by check or draft on the depositories in which it has been deposited; (5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest; (6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts; (7) lay before the final meeting of the creditors detailed statements of the administration of the estates; (8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors; (9) pay dividends within ten days after they are declared by the referees; (10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and (11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

*b.* Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

**SEC. 48. COMPENSATION OF TRUSTEES.**—*a.* Trustees shall receive, as full compensation for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and from estates which they have administered, such commissions on sums to be paid as dividends and commissions as may be allowed by the courts, not to exceed three per centum on the first five thousand dollars or less, two per centum on the second five thousand dollars or part thereof, and one per centum on such sums in excess of ten thousand dollars.

b. In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

c. The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

SEC. 49. ACCOUNTS AND PAPERS OF TRUSTEES.—*a.* The accounts and papers of trustees shall be open to the inspection of officers and all parties in interest.

SEC. 50. BONDS OF REFEREES AND TRUSTEES.—*a.* Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

b. Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time, not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

c. The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

d. The court shall require evidence as to the actual value of the property of sureties.

e. There shall be at least two sureties upon each bond.

f. The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

g. Corporations organized for the purpose of becoming sureties upon bonds, or authorized by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

h. Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

**i.** Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under this Act, of whose estates they are respectively trustees.

**j.** Joint trustees may give joint or several bonds.

**k.** If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

**l.** Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond.

**m.** Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

**SEC. 51. DUTIES OF CLERKS.**—**a.** Clerks shall respectively (1) account for, as for other fees received by them, the clerk's fee paid in each case and such other fees as may be received for certified copies of records which may be prepared for persons other than officers; (2) collect the fees of the clerk, referee, and trustee in each case instituted before filing the petition, except the petition of a proposed voluntary bankrupt which is accompanied by an affidavit stating that the petitioner is without, and can not obtain, the money with which to pay such fees; (3) deliver to the referees upon application all papers which may be referred to them, or, if the offices of such referees are not in the same cities or towns as the offices of such clerks, transmit such papers by mail, and in like manner return papers which were received from such referees after they have been used; (4) and within ten days after each case has been closed pay to the referee, if the case was referred, the fee collected for him, and to the trustee the fee collected for him at the time of filing the petition.

**SEC. 52. COMPENSATION OF CLERKS AND MARSHALS.**—**a.** Clerks shall respectively receive as full compensation for their service to each estate, a filing fee of ten dollars, except when a fee is not required from a voluntary bankrupt.

**b.** Marshals shall respectively receive from the estate where an adjudication in bankruptcy is made, except as herein otherwise provided, for the performance of their services in proceedings in bankruptcy, the same fees, and account for them in the same way, as they are entitled to receive for the performance of the same or similar services in other cases in accordance with laws now in force, or such as may be hereafter enacted, fixing the compensation of marshals.

**SEC. 53. DUTIES OF ATTORNEY-GENERAL.**—**a.** The Attorney-General shall annually lay before Congress statistical tables showing for the whole country, and by States, the number of cases during the year of voluntary and involuntary bankruptcy; the amount of the property of the estates; the dividends paid and the expenses of administering such estates; and such other like information as he may deem important.

**SEC. 54. STATISTICS OF BANKRUPTCY PROCEEDINGS.**—**a.** Officers shall furnish in writing and transmit by mail such information as is within

their knowledge, and as may be shown by the records and papers in their possession, to the Attorney-General, for statistical purposes, within ten days after being requested by him to do so.

## CHAPTER VI.

### CREDITORS.

**SEC. 55. MEETINGS OF CREDITORS.**—*a.* The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest. If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

*b.* At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

*c.* The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion of the best interests of the estate and the enforcement of this Act.

*d.* A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

*e.* The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

*f.* Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered.

**SEC. 56. VOTERS AT MEETINGS OF CREDITORS.**—*a.* Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

*b.* Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of

creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess.

**SEC. 57. PROOF AND ALLOWANCE OF CLAIMS.—***a.* Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

*b.* Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

*c.* Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending or before the referee if the case has been referred.

*d.* Claims which have been duly proved shall be allowed, upon receipt by or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

*e.* Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing over and above the value of their securities or priorities.

*f.* Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

*g.* The claims of creditors who have received preferences shall not be allowed unless such creditors shall surrender their preferences.

*h.* The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

*i.* Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

*j.* Debts owing to the United States, a State, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

*k.* Claims which have been allowed may be reconsidered for cause and reallocated or rejected in whole or in part, according to the equities of the case, before but not after the estate has been closed.

*l.* Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected in whole, or the proportional part thereof if rejected only in part.

*m.* The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

*n.* Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: *Provided*, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer.

SEC. 58. NOTICES TO CREDITORS.—*a.* Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors, unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions or the discharge of bankrupts; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon; (7) the proposed compromise of any controversy, and (8) the proposed dismissal of the proceedings.

*b.* Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

*c.* All notices shall be given by the referee, unless otherwise ordered by the judge.

SEC. 59. WHO MAY FILE AND DISMISS PETITIONS.—*a.* Any qualified person may file a petition to be adjudged a voluntary bankrupt.



b. Three or more creditors who have provable claims against any person which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors of such person are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

c. Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

d. If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

e. In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

f. Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

g. A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners or for want of prosecution or by consent of parties until after notice to the creditors.

SEC. 60. PREFERRED CREDITORS.—a. A person shall be deemed to have given a preference if, being insolvent, he has procured or suffered a judgment to be entered against himself in favor of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class.

b. If a bankrupt shall have given a preference within four months before the filing of a petition, or after the filing of the petition and before the adjudication, and the person receiving it, or to be benefited thereby, or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference, it shall be voidable by the trustee, and he may recover the property or its value from such person.

c. If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in bankruptcy may be set off against the amount which would otherwise be recoverable from him.

d. If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate.

## CHAPTER VII.

### ESTATES.

SEC. 61. DEPOSITORIES FOR MONEY.—a. Courts of bankruptcy shall designate, by order, banking institutions as depositories for the money of bankrupt estates, as convenient as may be to the residences of trustees, and shall require bonds to the United States, subject to their approval, to be given by such banking institutions, and may from time to time as occasion may require, by like order increase the number of depositories or the amount of any bond or change such depositories.

SEC. 62. EXPENSES OF ADMINISTERING ESTATES.—a. The actual and necessary expenses incurred by officers in the administration of estates shall, except where other provisions are made for their payment, be reported in detail, under oath, and examined and approved or disapproved by the court. If approved, they shall be paid or allowed out of the estates in which they were incurred.

SEC. 63. DEBTS WHICH MAY BE PROVED.—a. Debts of the bankrupt may be proved and allowed against his estate which are (1) a fixed liability, as evidenced by a judgment or an instrument in writing, absolutely owing at the time of the filing of the petition against him, whether then payable or not, with any interest thereon which would have been recoverable at that date or with a rebate of interest upon such as were not then payable and did not bear interest; (2) due as costs taxable against an involuntary bankrupt who was at the time of the filing of the petition against him plaintiff in a cause of action which would pass to the trustee and which the trustee declines to prosecute after notice; (3) founded upon a claim for taxable costs incurred in good faith by a creditor before the filing of the petition in an action to recover a provable debt; (4) founded upon an open account, or upon a contract express or implied; and (5) founded upon provable debts reduced to judgments after the filing of the petition and before the consideration of the bank-

rupt's application for a discharge, less costs incurred and interests accrued after the filing of the petition and up to the time of the entry of such judgments.

b. Unliquidated claims against the bankrupt may, pursuant to application to the court, be liquidated in such manner as it shall direct, and may thereafter be proved and allowed against his estate.

SEC. 64. DEBTS WHICH HAVE PRIORITY.—a. The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, State, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

b. The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition; (2) the filing fees paid by creditors in involuntary cases; (3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow; (4) wages due to workmen, clerks, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and (5) debts owing to any person who by the laws of the States or the United States is entitled to priority.

c. In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication.

SEC. 65. DECLARATION AND PAYMENT OF DIVIDENDS.—a. Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

b. The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as the first and as often as the amount shall equal ten

per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order.

c. The rights of creditors who have received dividends, or in whose favor final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

d. Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such courts shall be paid any amounts.

e. A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this Act.

SEC. 66. UNCLAIMED DIVIDENDS.—a. Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

b. Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: *Provided*, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

SEC. 67. LIENS.—a. Claims which for want of record or for other reasons would not have been valid liens as against the claims of the creditors of the bankrupt shall not be liens against his estate.

b. Whenever a creditor is prevented from enforcing his rights as against a lien created, or attempted to be created, by his debtor, who afterwards becomes a bankrupt, the trustee of the estate of such bankrupt shall be subrogated to and may enforce such rights of such creditor for the benefit of the estate.

c. A lien created by or obtained in or pursuant to any suit or proceeding at law or in equity, including an attachment upon mesne process or a judgment by confession, which was begun against a person within four months before the filing of a petition in bankruptcy by or against such person shall be dissolved by the adjudication of such person to be a bankrupt if (1) it appears that said lien was obtained and permitted while the defendant was insolvent and that its existence and enforcement will work a preference, or (2) the party or parties to be benefited thereby had reasonable cause to believe the defendant was insolvent and in contemplation of bankruptcy, or (3) that such lien was sought

and permitted in fraud of the provisions of this Act; or if the dissolution of such lien would militate against the best interests of the estate of such person the same shall not be dissolved, but the trustee of the estate of such person, for the benefit of the estate, shall be subrogated to the rights of the holder of such lien and empowered to perfect and enforce the same in his name as trustee with like force and effect as such holder might have done had not bankruptcy proceedings intervened.

d. Liens given or accepted in good faith and not in contemplation of or in fraud upon this Act, and for a present consideration, which have been recorded according to law, if record thereof was necessary in order to impart notice, shall not be affected by this Act.

e. That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this Act subsequent to the passage of this Act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned or incumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile, be and remain a part of the assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the State, Territory, or District in which such property is situate, shall be deemed null and void under this Act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt.

f. That all levies, judgments, attachments, or other liens, obtained through legal proceedings against a person who is insolvent, at any time within four months prior to the filing of a petition in bankruptcy against him, shall be deemed null and void in case he is adjudged a bankrupt, and the property affected by the levy, judgment, attachment, or other lien shall be deemed wholly discharged and released from the same, and shall pass to the trustee as a part of the estate of the bankrupt, unless the court shall, on due notice, order that the right under such levy, judgment, attachment, or other lien shall be preserved for the benefit of the estate; and thereupon the same may pass to and shall be preserved by the trustee for the benefit of the estate as aforesaid. And the court

may order such conveyance as shall be necessary to carry the purposes of this section into effect: *Provided*, That nothing herein contained shall have the effect to destroy or impair the title obtained by such levy, judgment, attachment, or other lien, of a bona fide purchaser for value who shall have acquired the same without notice or reasonable cause for inquiry.

SEC. 68. SET-OFFS AND COUNTERCLAIMS.—*a.* In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

*b.* A set-off or counterclaim shall not be allowed in favor of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy.

SEC. 69. POSSESSION OF PROPERTY.—*a.* A judge may, upon satisfactory proof, by affidavit, that a bankrupt against whom an involuntary petition has been filed and is pending has committed an act of bankruptcy, or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value, issue a warrant to the marshal to seize and hold it subject to further orders. Before such warrant is issued the petitioners applying therefor shall enter into a bond in such an amount as the judge shall fix, with such sureties as he shall approve, conditioned to indemnify such bankrupt for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained. Such property shall be released, if such bankrupt shall give bond in a sum which shall be fixed by the judge, with such sureties as he shall approve, conditioned to turn over such property, or pay the value thereof in money to the trustee, in the event he is adjudged a bankrupt pursuant to such petition.

SEC. 70. TITLE TO PROPERTY.—*a.* The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification, shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That when any bankrupt shall

have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and (6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

b. All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

c. The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

d. Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

e. The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value.

f. Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revert in him.

#### THE TIME WHEN THIS ACT SHALL GO INTO EFFECT.

a. This Act shall go into full force and effect upon its passage: *Provided, however,* That no petition for voluntary bankruptcy shall be filed within one month of the passage thereof, and no petition for involuntary bankruptcy shall be filed within four months of the passage thereof.

b. Proceedings commenced under State insolvency laws before the passage of this Act shall not be affected by it.

Approved, July 1, 1898.





## TITLE V.

### STATE EXEMPTION LAWS.

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#### ALABAMA.

Residents of this state are entitled to have exempt from levy and sale a homestead not exceeding one hundred and sixty acres, together with improvements thereon of the value not to exceed \$3,000; a burial place, a church pew, and \$1,000 of personal property, to be selected by the debtor; wages and salary to the amount of \$25 per month are exempt from levy under a writ of garnishment or other process. No partnership property, however, is exempt against copartners or partnership creditors. A provision is made whereby the homestead exemption does not apply so as to defeat the liens of laborers, mechanics or material-men for work done or material furnished. Crops while growing or gathering are exempt from levy and sale except in actions for the enforcement of rent and the labor furnished as described by the statutes of the state.

It is permissible for a husband or wife to insure their lives for the benefit of each other or of their children, and such insurance money will be exempt from execution. The debtor may waive his right to exemption as to personal property, either by a separate instrument in writing or by incorporating it in any bond, bill or note. If, however, such waiver relates to real property, it must be by separate instrument; and if the person be a married man, the waiver must be acknowledged by the wife.

The homestead exemption may be claimed in the fee simple of the land or any lesser estate, even though it be a term of years or a tenancy at will.

If goods levied upon be subsequently claimed by the defendant under the exemption laws of the state, the plaintiff may contest the same. If the defendant give bond within five days after notice of contest, he may take the property; and if he do not do so, the plaintiff may give such bond within five days thereafter and receive the property. If no bond is given within ten days after notice of contest, the property will be delivered to the defendant without bond. This digest includes changes in code which went into effect September 17, 1898.

## ALASKA.

It is provided by the act of congress of May 17, 1884, that the general laws of the state of Oregon, now in force, are hereby declared to be the law of said District of Alaska so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States. For exemptions, see Oregon.

## ARIZONA.

By the laws of this state the following property is exempt from execution against every head of a family: Personal property of not more than \$1,000, which may be selected by the debtor; a homestead which shall not exceed in value the sum of \$4,000; the earnings of a judgment debtor for his personal services for thirty days next preceding the date of the levy. It will be observed that by the laws of this state these exemptions are only given to the heads of families, and it would appear therefrom that a person not the head of a family, or unless he has some one dependent upon him, is not entitled to the benefit of these provisions.

## ARKANSAS.

The exemption laws of this state are contained in its constitution. Unmarried persons, residents of the state, who are not heads of families, are given exemptions in specific articles to be selected by such a resident not exceeding in value the sum of \$200 in addition to his or her wearing apparel, but such exemption does not extend to the purchase-money for the articles selected while in the hands of the vendee. If the person is married or is the head of a family, exemption is given in personal property in specific articles to be selected by such person, not exceeding in value the sum of \$500, in addition to his wearing apparel. By section 3 it is provided that the homestead of any resident of this state who is married or the head of a family shall not be subject to any judgment or decree of any court or sale under execution or other process thereon, except such as may be rendered for the purchase-money or for specific liens, laborers' or mechanics' liens for improving the same, or for taxes, or against executors, administrators, guardians, receivers, attorneys for moneys collected by him, and other trustees of an expressed trust for moneys due from them in their fiduciary capacity. The homestead outside of any town or village owned and kept as a residence shall not exceed one hundred and sixty acres of land with the improvements thereon, to be selected by the owner, provided the same shall not exceed in value the sum of \$2,500, and in no event shall the homestead be reduced to less than eighty acres without regard to value. The homestead in any city, town or village owned and kept as a residence shall not exceed one acre of land with the improvements thereon and shall not be valued at more than \$2,500, and in no event shall the homestead

be reduced to less than a quarter of an acre of land independently of its value. The homestead cannot be sold or mortgaged without the wife joining and releasing the same, but if the husband fails to claim it, it may be claimed by the wife; and if the estate of a decedent is less than \$300, it is all turned over to the widow and children.

#### CALIFORNIA.

Except on an execution issued upon a judgment for the purchase price of an article, or a judgment in foreclosure upon a mortgage of the article, the following property is exempt from execution: (1) Chairs, tables, desks and books to the value of \$200. (2) Necessary household, table and kitchen furniture belonging to the judgment debtor, including one sewing machine, stoves, stove-pipes and furniture, wearing apparel, beds, bedding and bedsteads, hanging pictures, oil paintings and drawings drawn or painted by any member of the family, and family portraits in their necessary frames, provisions actually provided for individual or family use sufficient for three months, and three cows with their sucking calves, four hogs with their sucking pigs, and food for such cows and hogs for one month; also one piano, one shot-gun and one rifle. (3) The farming utensils or implements of husbandry not exceeding in value the sum of \$1,000; also two oxen, or two horses or two mules and their harness, one cart or wagon, and food for such oxen, horses or mules for one month; also all seed grain or vegetables actually provided, reserved or on hand for the purpose of planting or sowing at any time within the ensuing six months, not exceeding in value the sum of \$200, and seventy-five bee hives, and one horse and vehicle belonging to any person who is maimed or crippled and the same is necessary in his business. (4) The tools or implements of a mechanic or artisan necessary to carry on his trade, the notarial seal, records and office furniture of a notary public, the instruments and chests of a surgeon, physician or surveyor or dentist necessary to the exercise of their profession, with their professional library and their necessary office furniture, the professional libraries of attorneys, judges, ministers of the gospel, editors, teachers and music teachers and their necessary office furniture; also the musical instruments of music teachers actually used by them in giving instructions, and all indexes, abstracts, books, papers, maps and office furniture of a searcher of records necessary to be used in his profession; also the typewriters actually used by the owner thereof for making his living; also one bicycle when the same is used in carrying on his business or in transporting the owner to and from his place of business. (5) The cabin or dwelling of a miner not exceeding in value the sum of \$500; also his sluices, pipes, hose, windlass, derrick, cars, pumps, tools, implements and appliances necessary for carrying on any mining operations, not exceeding in value the aggregate sum of \$500, and two horses, mules or oxen with their harness and food for same for

one month when necessary to be used in any windlass, derrick, car, pump or hoisting gear, and also his mining claim, actually worked by him, not exceeding in value the sum of \$1,000. (6) Two horses, two oxen or two mules and their harness and one cart or wagon, one dray or truck, one coupe, one hack or carriage for one or two horses, by the use of which a cartman, truckman, huckster, peddler, hackman, teamster or other laborer habitually earns his living, and one horse with vehicle and harness or other equipments, used by a physician, surgeon, constable or minister of the gospel in the legitimate practice of his profession or business, with food for such oxen, horses or mules for one month. (7) One fishing boat and net not exceeding the total value of \$500, the property of any fisherman, by the lawful use of which he earns a livelihood. (8) Poultry not exceeding in value \$25. (9) Seaman and sea-going fisherman's wages not exceeding \$100. (10) The earnings of the judgment debtor for his personal services rendered at any time within the thirty days next preceding the levy of execution or attachment, when it appears, by the debtor's affidavit or otherwise, that such earnings are necessary for the use of his family residing in this state, supported in whole or in part by his labor; but when debts are incurred by any such person or his wife or family for the common necessities of life, or occurred at a time when the debtor had no family residing in this state supported in whole or in part by his labor, one-half of such earnings above mentioned are nevertheless subject to execution, garnishment or attachment to satisfy debts so incurred. (11) The shares held by a member of a homestead association duly incorporated not exceeding in value \$1,000, if the person holding the shares is not the owner of a homestead under the laws of this state. All the nautical instruments and wearing apparel of any master, officer or seaman of any steamer or other vessel. (12) All moneys, benefits, privileges or immunities accruing or in any manner growing out of any life insurance on the life of the debtor, if the annual premiums paid do not exceed \$500. (13) All fire-engines, hooks and ladders, with the carts, trucks, carriages, hose buckets, implements and apparatus thereunto appertaining, and all furniture and uniforms of any fire company or department organized under the law of this state. (14) All arms, uniforms and accoutrements required by law to be kept by any person, and also one gun, to be selected by the debtor. (15) All court-houses, jails and town, county and state buildings, all public buildings, grounds, etc. (16) All material purchased in good faith for use in the construction, alteration or repair of any building, mining claim or other improvement, as long as in good faith the same is about to be applied to the construction, alteration or repair of such building, mining claim or other improvement.

A homestead which shall not exceed in value the sum of \$5,000, consisting of the dwelling-house where the debtor resides, together with the land upon which it is situated, may be selected by the husband, or,

in the case of his failure to do so, by his wife. If it be selected from the separate property, his wife must consent thereto by joining in it or by making declarations. Such selection may also be made from the community property, or from the separate property of the husband. The homestead, however, is not exempt from execution under the following judgments: (1) Before the declaration of homestead was filed for record, and which constitute liens upon the premises. (2) On debts secured by mechanics, contractors, subcontractors, artisans, architects, builders, laborers of every class, material-men's or vendors' liens upon the premises. (3) On debts secured by mortgages on the premises, executed and acknowledged by husband and wife or by an unmarried claimant. (4) On debts secured by mortgages on the premises executed and recorded before the declaration of homestead was filed for record.

A homestead not exceeding the value of \$1,000 may be declared by any person not the head of a family. A homestead can only be abandoned by a duly executed and acknowledged instrument to that effect, which must be recorded, and which takes effect only from the date of recordation. If the homestead be selected from the community property, it vests, on the death of the husband or wife, in the survivors. If it be taken from individual property, it vests in the heirs or devisees, subject to the order of the superior court assigning it for a limited period to the family of the decedent.

#### COLORADO.

Every householder or head of the family is given a homestead, free from execution while such homestead is occupied by him or his family, not to exceed in value the sum of \$2,000. This homestead is selected by writing the word "homestead" upon the margin of the title as recorded in the recorder's office and attested by that officer. There is likewise exempt from execution and attachment the necessary wearing apparel of all persons and the following property of persons who are heads of families: family pictures, school books and library, a seat or pew in any house of public worship, sites for burial for the dead, beds, bedding, bedsteads kept and used for the debtor and his family, stoves, cooking utensils and household furniture not exceeding \$100 in value. Necessary provisions and fuel for six months; the tools and implements of any mechanic, miner or other person not exceeding \$200; the library and implements of any professional person not exceeding \$300; working animals of any person not exceeding \$200; one cow and calf, ten sheep, and food for the same for six months; one farm wagon, cart or dray, one plow, one harrow, and other farming implements, including harness and tackle for the same, not exceeding in value the sum of \$50. Upon the death of the head of a family, the family is entitled to these exemptions. In case of any execution, attachment or garnishment being levied upon the wages or earnings of the head of the family or his wife who are depend-

ent in whole or in part upon such earnings, the sum of \$60 is likewise exempt. Pension money received from the government of the United States is likewise exempt whether the pensioner be at the head of the family or not.

#### CONNECTICUT.

The following property is exempt from warrant or execution: Of the property of any person, his necessary wearing apparel and bedding, and household furniture necessary for supporting life, arms, military equipments, uniforms or musical instruments owned by any member of the militia for military purposes, any pension moneys received from the United States while in the hands of the pensioner, implements of the debtor's trade, a library not to exceed \$500 in value, one cow of the value of \$150, any number of sheep not exceeding ten nor of a greater value than \$150, two swine and the pork produced therefrom, or poultry not exceeding \$25 in value. If the debtor have a wife or family, the following are the exemptions: Twenty-five bushels of charcoal, two tons of other coal, two hundred pounds of wheat flour, two cords of wood, two tons of hay, two hundred pounds each of beef and fish, five bushels each of potatoes and turnips, ten bushels each of Indian corn and rye and the meal and flour manufactured therefrom, twenty pounds each of wool or flax, or the yarn or cloth made therefrom, the horse of any practicing physician or surgeon not to exceed \$200 in value, together with his saddle, bridle, harness and buggy, one boat owned by one person and used by him in the business of planting or taking oysters or clams, or taking shad, together with the sails, tackle, rigging and implements used in said business of the value not more than \$200, one sewing machine, one pew, a burial ground, so much of any debt which has accrued by reason of the personal services of the debtor as shall not exceed \$50, including wages due for personal service of any minor or child under the age of twenty-one years. All benefits allowed by any association of persons in this state towards the support of any of its members incapacitated by sickness or infirmity from attending to his usual business. A homestead of the value of \$1,000 is exempt from execution so long as the same is actually occupied as a dwelling, and only the excess of value over \$1,000 can be set off. The husband, wife and guardian of minor children, with consent of the judge of probate, may release such right of homestead, and this release may be recorded as a deed.

#### DELAWARE.

The exemptions in this state differ in the three counties of the state. Family books and pictures, wearing apparel of the debtor and his family, his tools and implements used in his business or trade not exceeding in value the sum of \$75, are exempt in the counties of Sussex and New Castle, and of the value of \$50 in Kent county. In addition the head of the family

in New Castle county is entitled to have set off to him other personal property out of his estate of the value of \$200; in Kent county \$150, and in Sussex county no additional exemption is allowed. Sewing machines owned and used by seamstresses or private families are exempt from execution or restraint. In New Castle county wages are exempt from execution and attachment, and wages for one month not exceeding \$50 are a first lien on the real and personal property of the employer. Widows are entitled to the same exemption out of the husband's goods that the husband would have if he were alive. (See Del. Laws 1879, vol. 16, page 214, and Del. Laws 1893, vol. 19, page 1181.)

#### DISTRICT OF COLUMBIA.

The following exemptions are allowed by the Revised Statutes of the District of Columbia, section 797: To all persons being householders or heads of families, all wearing apparel, beds, bedding, household furniture, stoves, cooking utensils, etc., of the value not to exceed \$300, provisions for three months' support, fuel for three months, mechanics' tools and implements of the debtor's trade or business, amounting to \$200 in value, together with \$200 worth of stock for carrying on the business of the debtor or his family. The library and implements of professional men or artists to the value of \$300, one horse, mule or yoke of oxen, one cart, wagon or dray and harness for such teams, farming utensils, with food for such team for three months, and, if the debtor be a farmer, any other farming tools of the value of \$100, all family pictures and all the family library, not exceeding in value \$400, one cow, one swine, six sheep. But none of the foregoing exemptions, except that of wearing apparel, beds, household furniture and provisions for the debtor and his family, are good against any debt due for the wages of servants, common laborers or clerks. The earnings not to exceed \$100 per month of all residents of the District of Columbia, and who are married persons or who have to provide for the support of a family within this district, are exempt for two months next preceding the attachment. (See Act of Congress, June 19, 1878.)

#### FLORIDA.

A homestead to the extent of one hundred and sixty acres of land, or the half of one acre if the same be situated within the limits of any incorporated city or town, owned by the head of the family residing in this state, together with \$1,000 worth of personal property and the improvements on the real estate, shall be exempt from forced sale under process of any court, and the real estate shall not be alienable without the joint consent of husband and wife, when that relation exists. The head of a family cannot devise his homestead so as to deprive his children of the benefit of the same. Money due for the personal labor or services of any person who is the head of a family residing in this state is exempted from attachment or garnishment. (See Const. 1885, art. 10,

secs. 1, 2, 3, 4 and 5.) A piece of land never occupied as a dwelling-place, and incapable of such occupancy, is not a homestead within the meaning of the exemption provided for in the constitution and laws of this state. (*Drucker v. Rosenstein*, 19 Fla. 191.)

#### GEORGIA.

The constitution of 1877 provides: "There shall be exempt from levy and sale, by virtue of any process whatever, under the laws of this state, except as hereinafter excepted, of the property of every head of a family, or guardian or trustee of a family of minor children, or every aged or infirm person, or person having the care and support of dependent female of any age, who is not the head of a family, realty or personalty, or both, to the value in the aggregate of \$1,600. No court or ministerial officer in this state shall ever have jurisdiction or authority to enforce any judgment, execution or decree against the property set apart for such purpose, including such improvements as may be made thereon from time to time, except for taxes, for the purchase-money of the same, for labor done thereon, for material furnished therefor, or for the removal of incumbrances thereon. The debtor shall have the power to waive or renounce in writing his right to this benefit of exemption, except as to wearing apparel and not exceeding \$300 worth of household and kitchen furniture and provisions, to be selected by himself and his wife, if any, and he shall not, after it is set apart, alienate or incumber the property so exempted, but it may be sold by the debtor and his wife, if any, jointly, with the sanction of the judge of the superior court of the county where the debtor resides or the land is situated, the proceeds to be reinvested upon the same uses." The act of 1878 carries out these provisions.

If the debtor is the head of a family and does not avail himself of the benefit of the exemptions above recited, it is permissible for him to claim the benefit of those existing in prior laws, to wit: Fifty acres of land, and five additional for each child under the age of sixteen years, which shall include the dwelling-house, together with the improvements thereon, of the value not to exceed \$200; provided, however, that such land be not situated in any city, town or village, nor have upon it any factory, mill or other machinery propelled by water or steam, the value of which exceeds \$200. Land situated in any city, town or village is not exempt beyond the sum of \$500. The following articles are also exempt: One farm horse or mule, one cow and calf, ten head of hogs, \$50 worth of provisions and \$5 worth for each additional child, beds, bedding and common bedsteads sufficient for the family, one loom, one spinning wheel, two pair of cards, one hundred pounds of lint cotton, common tools of trade of the debtor or his wife, ordinary cooking utensils, table crockery and wearing apparel; the library of professional men in actual practice or business which does not exceed \$300 in value; fifty bushels



of corn, one thousand pounds of fodder, one one-horse wagon, one table, household and kitchen furniture not to exceed \$150 in value. The debtor may likewise waive the benefit of these exemptions except so much as are excepted in the constitution of 1877.

## IDAHO.

A homestead may be selected by the husband, or, in case of his failure, by his wife or other head of the family, to the value of \$5,000; or if a person be not the head of a family to the value of \$1,000. This declaration of homestead must be properly acknowledged and recorded, and when this has been done, it is prior to all claims against the property which are not existing liens at the time the declaration of homestead was recorded. In addition to such homestead, there is likewise exempt from execution the following property: The chairs, tables, desks and books to the value of \$200; necessary household furniture of the value of \$300; wearing apparel, paintings, drawings, pictures and the like, and provisions provided for individual or family use sufficient for six months; two cows, two hogs, together with their increase; farming utensils to the value of \$300; four horses, four oxen or four mules, together with harnesses; a cart or wagon, together with harness and food for such team for six months; water-right not exceeding one hundred and sixty inches of water for the irrigation of lands annually cultivated, and crop or crops growing or grown on fifty acres of land leased, owned or possessed by claimant; necessary tools or implements of a mechanic or artisan of the value of \$500; notary's seal and records; necessary instruments for use of surgeon, physician, surveyor and dentist, with their libraries; professional libraries and office furniture of attorneys, counselors and judges, and the libraries of clergymen; cabin or dwelling of a miner of the value of \$500, also his sluices, pipes, hose and other necessary tools and machinery of the value of \$200; one saddle horse and one pack horse, together with their saddles and equipments, belonging to a miner actually engaged in prospecting, of the value of \$250; the team, wagon or cart and harnesses of teamster or other laborer; a horse, harness and vehicle used by a physician, surgeon or clergyman, with food for all such animals for six months; earnings of judgment debtor, if necessary for his family, for services rendered within the thirty days next preceding levy of execution, not exceeding in value \$100, where his family is residing in the state; shares held by a member of a homestead association, or building or loan association, duly incorporated under the laws of the state, where the person holding the shares is not the owner of the homestead, under the laws of the state; life insurance in an amount represented by an annual premium not exceeding \$250; engines, apparatus and uniforms of a fire company or department organized under any law of the state; arms, uniforms and accoutrements required by law

to be kept; public buildings, grounds and personal property appertaining thereto. The above exemptions, however, do not apply to any judgment recovered upon the purchase price of the article named.

### ILLINOIS.

Every householder having a family is entitled to a homestead of \$1,000 in value. Any farm or lot of land and buildings thereon, owned or possessed under this law or otherwise, and kept as a residence, shall be exempt from seizure or sale on attachment or execution for the payment of these debts or other purposes. Such exemptions continue for the benefit of the surviving husband or wife so long as he or she continues to keep such homestead until the youngest child becomes twenty-one years of age. In order to release this homestead the husband and wife must join in the conveyance. The proceeds of the sale of any homestead to the extent of \$1,000 is exempt for one year after the receipt of it, and if it be reinvested in a homestead, such homestead is exempt. Insurance money, in case of fire, is exempt to the same extent as the property insured. The creditor may have the premises claimed as homestead appraised, and if found to exceed the value of \$1,000, and can be divided without injury, so much of the premises including the dwelling as in the opinion of the appraisers is worth \$1,000, will be set over to the debtor as exempt and the residue sold for the satisfaction of the judgment. If the premises, however, cannot be divided, the property is valued by appraisers, and the debtor may pay the surplus over \$1,000; otherwise, the property may be sold, and the officer having the execution pays \$1,000 to the debtor, and the remainder is applied in satisfaction of the creditor's claim.

In addition to this homestead the following personal property is likewise exempt: The necessary wearing apparel, bibles, family books and family pictures, \$100 worth of other property to be selected by the debtor, and in addition, when the debtor is the head of a family and resides with his family, \$300 worth of other property to be selected by the debtor, provided the exemption shall not be allowed from any money, salary or wages due the debtor. If the head of any family dies, or if he desert or does not live with his family, the exemptions continue to the family. No personal property is exempt from processes under a judgment for a debt for the wages of a laborer or servant. Exemptions cannot be claimed out of partnership property. (See 37 Ill. App. 489, also 38 id. 269.) When a debtor desires to claim exemptions, he must, within ten days after the service of process and notice, make a schedule under oath of all his personal property of every kind, including money in hand and debts due or owing to him. Any property not included in this schedule is not subject to exemptions. A valuation is then placed upon the articles named in the schedule by appraisers appointed for that purpose. The total value of the articles selected by the debtor shall not exceed

the amount of the exemption allowed, and the remainder is sold by the officer in satisfaction of the debt. The benefit moneys received from any life or accident insurance company organized under the act of July 1, 1893, are exempt. If a debtor be the head of a family and resides with his family, his wages are exempt to the extent of \$8 a week. The statutes of this state make it a misdemeanor and provide a penalty for sending a claim to another state for collection out of the earnings of the debtor by garnishment or other proceeding when the debtor is a resident, and the creditor, debtor and garnishee are all within the jurisdiction of the courts of Illinois, with intent to deprive the debtor of his rights under the exemption laws of this state; or to transfer for such purpose a claim against a citizen of this state.

#### INDIAN TERRITORY.

The exemptions in this territory are the same as those in the state of Arkansas.

#### INDIANA.

There is not in this state any homestead exemption in the ordinary acceptation of that term. Every resident householder or resident married woman may, however, claim as exempt from execution against them, respectively, his or her property, real or personal, to the amount of \$600 upon any debt founded upon any contract made since May 3, 1879, and this right exists while the property is *in transitu* from one residence to another within the state, and to be claimed by the wife for the husband in his absence. Twenty-five dollars is exempt from garnishment, and, on proceedings supplemental to execution, as long as the employment continues, but no exemption can affect any laborer's or mechanic's lien, or lien for the purchase-money of real property or for taxation. The right of exemption cannot be waived by contract. The property of a resident householder which is exempt from sale on execution may be real or personal, or both. It must, however, be properly appraised by the officer after receiving from the debtor a sworn schedule of all his property, credits and effects. If the property claimed exceeds in value the sum of \$600, provision is made by the statutes for the sale thereof and the application of the residue for the payment of the debts.

#### IOWA.

The following property is exempt from execution, provided the debtor be the head of a family residing in the state of Iowa: All wearing apparel of himself and family kept for actual use and suitable for their condition, and the trunks or other receptacles necessary to contain the same; one musket or rifle and shot-gun; all private libraries, family bibles, portraits, pictures, musical instruments and paintings not kept for the purpose of sale; a seat or pew occupied by the debtor or his family

in any house of public worship; an interest in a public or private burying ground, not exceeding one acre; two cows and two calves; fifty sheep and the wool therefrom and the materials manufactured from such wool; six stands of bees; five hogs and all pigs under six months; the necessary food for all animals exempt from execution, for six months; one bedstead and the necessary bedding for every two in the family; all cloth manufactured by the defendant, not exceeding one hundred yards in quantity; household and kitchen furniture not exceeding \$200 in value; all spinning wheels and looms; one sewing machine and other instruments of domestic labor kept for actual use; the necessary provisions and fuel for the use of the family for six months; the proper tools, instruments or books of the debtor, if a farmer, mechanic, surveyor, clergyman, lawyer, physician, teacher or professor; if the debtor is a physician, public officer, farmer, teamster or other laborer, a team consisting of not more than two mules or horses, or two yoke of cattle, and the wagon or other vehicle, with the proper harness or tackle, by the use of which he habitually earns his living, otherwise one horse; if a printer, a printing press and the types, furniture and material necessary for the use of such printing press and a newspaper office connected therewith, not to exceed in all the value of \$1,200; poultry to the value of \$50, and the same to any woman whether the head of a family or not; and if the debtor is a seamstress, one sewing machine.

All money received by any person a resident of the state, as a pension from the United States government, whether the same shall be in actual possession of such pensioner, or deposited, loaned or invested by him, shall be exempt from execution, whether such pensioner shall be the head of a family or not. The homestead of every such pensioner, whether the head of a family or not, purchased and paid for with any such pension money, or the proceeds or accumulations thereof, shall also be exempt; and such exemption shall apply to debts of such pensioner contracted prior to the purchase of the homestead.

The earnings of a debtor who is a resident of the state and the head of a family for his personal services, or those of his family, at any time within ninety days next preceding the levy, are exempt from liability for debt.

None of the foregoing exemptions are allowed against an execution issued for the purchase-money of property claimed to be exempt, and on which such execution is levied.

If the debtor absconds and leaves his family, such property as is exempt to him under the laws of this state is exempt in the hands of his wife and children.

The homestead of every family is exempt from judicial sale where there is no special declaration of statute to the contrary. If within a town plot, it must not exceed one-half acre in extent, and if without, it must not embrace more than forty acres, and in each case embraces all

the buildings and improvements thereon without limitation as to value. Upon the death of either husband or wife, the survivor may continue to possess and occupy the whole homestead. If there is no survivor and no will, the homestead descends to the issue of either husband or wife, and is to be held exempt from any antecedent debts of their parent or their own. The avails of all policies of insurance on the life of any individual payable to his surviving widow shall be exempt from liabilities for all debts of such beneficiary contracted prior to the death of the insured, the total exemption of any one person not exceeding \$5,000.

#### KANSAS.

By the constitution it is provided that a homestead to the extent of one hundred and sixty acres of farming land, or of one acre within the limits of an incorporated town or city, occupied as a residence for the family of the owner, together with all the improvements on the same, shall be exempted from forced sale under any process of law, and shall not be alienated without the joint consent of husband and wife, when that relation exists; but no property shall be exempt from sale for taxes, or for the payment of obligations contracted for the purchase of said premises, or for the erection of improvements thereon. This, however, does not apply where the lien is given by consent of the husband or wife.

It is provided by statute that every resident of the state, and being the head of a family, shall have exempt from seizure and sale upon any attachment, execution or other process, the following articles of personal property: The family books, pictures and musical instruments, a seat or pew in church and a lot in burial ground, all wearing apparel, all spinning wheels and looms, and all other instruments of industry and household furniture not above enumerated, not exceeding in value \$500; also two cows, ten hogs, one yoke of oxen and one horse or mule, a span of horses or mules, twenty sheep and the wool from the same, the necessary food for the support of the stock just mentioned for one year, one wagon, cart or dray, two plows, one drag, and other farming utensils not exceeding in value \$300, provisions and fuel for the support of the family for one year, the necessary tools and implements of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business, and in addition thereto stock in trade not exceeding \$400 in value, the library, implements and office furniture of any professional man. No property, however, is exempt from attachment or execution for the wages of any laborer.

The earnings of a debtor who is a resident of this state, for his personal services at any time within three months next preceding the issuing of an execution, attachment or garnishment process, cannot be applied to the payment of his debts when it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the maintenance of a family supported wholly or partly by his labor.

## KENTUCKY.

There is exempt to every *bona fide* housekeeper, resident upon the property and the owner thereof at the time of the creation of the debt, a homestead of the value of \$1,000.

The tools of all mechanics and the libraries of all professional men are exempt to the extent of \$500. There is also exempt to any resident with a family, property, if on hand, consisting of work beasts, domestic animals and fowls, farm and garden implements, household furniture, one sewing machine, and all family portraits and pictures; certain manufactured articles necessary for the family use, provided the same be manufactured by the family; all wearing apparel; sufficient provisions, including bread stuff and animal food to sustain the family for one year; if this latter property is not on hand, other personal property, money or growing crops, not to exceed \$40 in value, for each member of the family; provender suitable for live-stock, if there be any such stock, not to exceed \$70 in value. And if such property be not on hand, such property as shall not exceed such sum in value.

## LOUISIANA.

A homestead to the value of \$2,000 is exempt. Any head of a family or person having others dependent upon him for support can, by proper declaration and registry, set aside real property with certain farm implements and stock, of a value not exceeding \$2,000, as a homestead. Such property must be actually occupied by him, and in order to create this homestead a declaration under oath must be recorded in the book of mortgages in the parish where the property is situated. This declaration must contain a statement of the facts that show the person claiming the homestead is a person of the description entitled thereto; that the person claiming is residing on the property and has a *bona fide* title thereto, stating nature of title, description of land and enumeration of the other exemptions, an estimate of the cash value of the exemptions, and statement of intention to claim such homestead and exemptions. No husband can have benefit of homestead whose wife owns or is in actual enjoyment of property or means to the amount of \$2,000.

The owner of the homestead has the right, at any time, to supplement his exemption until the amount equals the sum of \$2,000. The homestead is not susceptible of mortgages, except for the purchase price, labor and materials furnished for its building, repairing or improving. Nor is any waiver or renunciation of homestead rights or exemptions valid. The homestead, however, may be sold. It may be claimed in cities as well as counties. The following property is likewise exempt: Laborers' wages, the clothes belonging to the debtor or his wife, his bed, those of his family, his arms and military accoutrements, the tools and instru-

nents necessary for the exercise of the trade or profession by which he gains a living, the rights of personal servitude, use and habitation, the usufruct to the estate of a minor child, the income of dotal property, the books and sewing machines necessary for the exercise of one's calling, trade or profession by which the owner makes a living, the salary of an officer, cooking stove and utensils, plates, forks, etc., dining table and chairs, washtubs, smoothing irons and ironing furnaces, family portraits, and musical instruments played on by any member of the family.

#### MAINE.

The real estate of the value of \$500 is exempt as a homestead from attachment, except for liens of mechanics and material-men, provided the owner files the required certificate in the office of the registry of deeds. A burial ground in cemetery is likewise exempt.

The following personal property is exempt from attachment and levy: Wearing apparel; \$100 worth of household furniture necessary for the family, one bedstead, bed and bedding for each two members, family portraits, bibles, school books in actual use; copy of state statutes, library worth \$150; pew in use; one cooking and all iron warming stoves, charcoal, twelve cords of wood at home for use, five tons of anthracite and fifty bushels of bituminous coal, \$10 worth of lumber, wood or bark, all produce until harvested, one barrel of flour, thirty bushels of corn, grain, all potatoes raised or bought for debtor or his family, half an acre of flax and manufactures therefrom for use, tools of trade, \$50 worth of materials and stock procured and necessary for trade or business and intended to be used in same, sewing machine worth \$100, one pair of working cattle or one pair of horses or mules worth \$300, and hay to keep them through the winter, one harness worth \$20 for each horse or mule, a horse sled or ox sled, two swine, one cow and a heifer under three years, or two cows if no oxen, horse or mule, ten sheep with their wool and lambs, hay sufficient to keep them through the winter, \$50 worth of domestic fowl, one plow, one cart or truck wagon, or one express wagon, one harrow, one yoke with bows, ring and staple, two chains, one mowing machine, one boat of two tons employed in fishing, and owned exclusively by an inhabitant of the state, life and accident insurance policies, except excess of annual cash premiums for two years above \$150. Also two shares in loan and building associations. (See Code, ch. 81, sec. 62; ch. 75, sec. 10; ch. 49, sec. 94; ch. 15, sec. 8; ch. 81, secs. 63-66.)

#### MARYLAND.

There is exempt from execution wearing apparel, mechanical textbooks or books of professional men; the mechanic or professional men's tools used by them in their trade or profession. There is exempt also \$100 worth of other property to be selected by the defendant, or, if \$100

worth cannot conveniently be set aside, that amount shall be paid to the defendant out of the proceeds of the sale. This provision, however, does not apply to any judgment obtained in any action for breach of promise to marry or seduction. (Code of 1888, art. 83; *vide* 57 Md. 314.) Intangible property, whether real or personal, except stocks, cannot be taken under execution, such as a chose in action or a lien coupled with possession. The course in such a case is for the creditor to cause his execution to be levied and returned, and then seek his redress in a court of equity.

#### MASSACHUSETTS.

The following personal property of a debtor is exempt from attachment or execution: The necessary wearing apparel of himself, wife and children; one bedstead, etc., for every two members of his family; one iron stove and fuel to value of \$20; other necessary household furniture to value of \$300; books to value of \$50; one cow, six sheep, one swine, and two tons of hay; tools, etc., in his business to value of \$100; materials and stock in his business to value of \$100; provisions to the value of \$50; one pew; the boat, fishing tackle and nets of a fisherman to the value of \$100; uniform and arms of an officer or soldier in militia; rights of burial and tombs in use; one sewing machine in use to the value of \$100; shares in certain co-operative associations to value of \$20 in the aggregate. The debtor's homestead to the extent of \$800 is also exempt, provided it is declared in the conveyance to be designed for a homestead, or such design is declared by writing signed, sealed, acknowledged and recorded. Benefits provided by assessment and fraternal insurance are exempt on claim against either insured or beneficiary.

#### MICHIGAN.

A homestead not to exceed forty acres of land, and the house thereon if situated in the country, or a house and lot in any city or village not exceeding in value \$1,500. If it exceeds that amount in value it may be sold, and after paying the judgment debtor the balance may be taken by the creditor. A married householder cannot sell or incumber such homestead without the consent of the wife. The following property is exempt from sale under execution: Spinning-wheels, weaving-looms and stoves put up and kept for use in any dwelling-house; a pew in a church and a lot in a cemetery, if used; arms required by law to be kept; all wearing apparel of every person and his family; the library and school books of every individual or family, not exceeding in value \$150; one sewing machine; all family pictures; to each householder ten sheep, two cows and five swine; six months' provisions and fuel, and household goods, furniture and utensils not exceeding in value \$250; to each debtor the tools, implements, materials, stock, apparatus, team, vehicle, horses, harness or other things not exceeding in value \$250, to enable him to



carry on the business in which he is wholly or principally engaged; a sufficient quantity of hay, grain and feed for properly keeping for six months such exempt animals. No lien can be created on any of the above property, except the \$250 worth of tools, implements, etc., without the signature of the wife to the mortgage, etc. A non-resident cannot avail himself of the exemption laws. In case of partnership, each partner is entitled to the exemption contained in the provision relative to the tools, implements, materials, stock, etc., of the debtor's principal business.

#### MINNESOTA.

By the laws of 1885, chapter 37, the following property is exempt: Family bible, family pictures, school books or library or musical instruments for use of family; seat or pew in any house or place of public worship; a lot in a burial ground; all wearing apparel of debtor and family; all beds, bedding and bedsteads kept and used by debtor and his family; all stoves and appendages put or kept for use of debtor and family; all cooking utensils, and all the household furniture not herein enumerated not exceeding \$500 in value; three cows, ten swine, one yoke of oxen and a horse, or in lieu thereof a span of horses or mules; twenty sheep and the wool from same; necessary food for stock for one year, provided or growing, or both; one wagon, cart or dray, one bicycle. By the laws of 1897, page 6, there is exempt one sleigh, two plows, one drag and other farming utensils, including tackle for team, not exceeding \$300 in value; one sewing machine, one typewriter. By the laws of 1897, page 12, there is exempt grain necessary for one year's seed, not exceeding one hundred bushels of wheat, fifty bushels of oats, one hundred bushels of barley, one hundred bushels of potatoes and ten bushels of corn, and binding material for use in harvesting crop raised from seed grain above specified.

By the General Statutes of 1878, chapter 66, section 310; laws of 1885, page 44, and the laws of 1889, page 325, the following exemptions are allowed: The provisions of the debtor and his family for one year's support, provided or growing, or both, and one year's fuel; tools or instruments of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade, and stock in trade not exceeding \$400; library and implements of any professional man. Also the wages of any laboring man or woman or their minor children, not exceeding \$25, due for services rendered during the thirty days preceding the issue of process, and moneys arising from insurance or exempt property. By the General Statutes of 1878, chapter 66, section 310, there are exempt from attachment or sale, in addition to the above enumerated, all the presses, stones, types, cases and other tools and implements used by any copartnership, or by any printer, publisher or editor of any newspaper, and in the printing or publication of the same, not to exceed \$2,000 in value, together with stock in trade not exceeding \$400 in value.

By the laws of 1897, pages 262, 620, the library of any public college or school is exempt; and the money derived from insurance upon the life of the deceased husband or father in the hands of a widow or child, not exceeding \$10,000, is exempt. By the General Statutes of 1878, chapter 68, section 1, there is exempt a homestead not exceeding eighty acres of land, with dwelling-house thereon, to be selected by the owner, not included in the laid-out or platted portion of any incorporated town, city or village; or instead thereof, at the owner's option, a quantity of land not exceeding one lot, if within the laid-out or platted portion of any incorporated town, city or village having over five thousand inhabitants; or one-half an acre if within the laid-out or platted portion of any such town, city or village having less than five thousand inhabitants; and the dwelling-house thereon and its appurtenances, owned and occupied by any resident of this state, is not subject to attachment, levy or sale upon execution. Such a homestead is exempt while occupied by the widow or minor children of any person deceased who was, while living, entitled to the benefit of the homestead act. If a married man absconds from the state or deserts his wife or minor children, such wife and children may continue to occupy such homestead, and the same shall be exempt from levy or sale upon attachment, execution or other final process issued against such husband and wife or either of them.

#### MISSISSIPPI

The following property is exempt from seizure for debt: A mechanic's tools necessary for carrying on his trade; the agricultural implements of a farmer necessary for two male laborers, necessary in his usual employment; the books of a student required to complete his education; the wearing apparel of every person; the libraries of lawyers, doctors and ministers not exceeding \$250 in value; instruments of surgeons and dentists used in their profession, not exceeding \$250 in value; the arms and accoutrements of militiamen; books, maps, globes, etc., used by teachers of schools, etc.; wages of a laborer to the extent of \$20. The head of the family is entitled to the following exemptions: Two work horses or mules, two oxen, two cows and calves, twenty head of hogs, twenty sheep or goats, two hundred and fifty bushels of corn, ten bushels of wheat or rice, five hundred pounds of pork or bacon, one wagon or buggy or cart and harness, five hundred bundles of fodder, one sewing machine, all colts under three years of age raised in the state by the debtor, one hundred bushels of cotton seed, forty gallons of sorghum, one thousand stalks of sugar cane, one bridle and saddle and side-saddle, household and kitchen furniture not exceeding in value \$200, wages of a laborer or mechanic not exceeding \$100, all poultry, one thousand pounds of hay, one sorghum mill worth not more than \$150, proceeds of insurance policy on exempt property; also one hundred and sixty acres of land or town residence not exceeding \$2,000 in value. A resident of

a city or town having a family may select \$250 worth of property in lieu of the personalty above named. Exempt property may be conveyed as security for debt, but exemptions cannot be waived. The homestead exemption only exists where the debtor resides on the property. The owner of a homestead in a city or town, or in the country, may designate the land claimed as such by writing acknowledged, and have it recorded, and thus secure exempt property worth \$3,000 instead of \$2,000 if not so designated. No property is exempt from liability for debts which consist in whole or in part of the purchase-money thereof or for labor done thereon, or materials furnished therefor, or where the judgment is for labor performed, or upon forfeiture of bail bond or a cognizance, or for taxes. The proceeds of a life insurance policy not exceeding \$10,000 in amount upon one life inures to the parties named as beneficiaries therein, and is exempt from liability for the debts of the person whose life was insured. Proceeds of life insurance not exceeding \$5,000, payable to the executor and administrator of the insured, inure to the heirs or legatees free from liability for the debts of the decedent, except where such person's life is insured for the benefit of such heirs or legatees at the time of his death in addition, which additional insurance must be deducted from the \$5,000, and the excess only shall be exempt. Money recovered upon a judgment for unlawful killing is exempt from execution for the debts of the decedent.

#### MISSOURI.

The wearing apparel of all persons, and the necessary tools and implements of any mechanic, are exempt from execution. The last thirty days' wages are also exempt from execution. The following property is exempt to every head of a family: Ten head of hogs; ten head of sheep, and the products thereof in wool, yarn or cloth; two cows and calves; two plows, one axe, one hoe and one set of plow gears, and all necessary farm implements for the use of one man; working animals to the value of \$150, or two work animals; the spinning wheel and cards, one loom and apparatus necessary for manufacturing cloth in a private family; all the spun yarn, thread and wool not exceeding twenty-five pounds each; all wearing apparel of the family; four beds with the usual bedding; and such other household and kitchen furniture, not exceeding the value of \$100, as may be necessary for the family, agreeably to an inventory thereof, to be returned on oath with execution of the officer whose duty it may be to levy the same; all arms and military equipments required by law to be kept; all such provisions as may be found on hand for family use, not exceeding \$100 in value; the bibles and other books used in a family; lettered gravestones, and one pew in a house of worship. In lieu of other property, lawyers and ministers may select such books as may be necessary to their profession, and physicians their medicines. In lieu of the property mentioned above, each such head of

a family may select and hold exempt any other property, real, personal or mixed, or debts and wages, not exceeding in value the sum of \$300. The wife may claim exempt personal property when husband has absented himself. Personal property, except in the hands of an innocent purchaser for value without notice, is subject to execution against purchaser for the purchase price. No property is exempt from execution issued upon a judgment for not exceeding \$90, recovered by the house servant or common laborer for personal services rendered to defendant, provided the suit is brought within six months after the last service is rendered. The members of a firm are neither severally nor jointly entitled to partnership assets exempted to heads of families.

#### MONTANA.

A homestead not exceeding the sum of \$2,500 in value, and agricultural land not exceeding one hundred and sixty acres, and if within the limits of a town, city or village, not exceeding one-fourth of an acre, is exempt. This exemption does not affect the lien of any mechanic or laborer, or extinguish the mortgage lawfully obtained, and such exemptions apply only to married men or the heads of families. There shall be no exemption from attachment or execution for wages of any clerk, mechanic, laborer or servant.

The following personal property is likewise exempt: All clothing of the debtor and family; chairs, tables, desks and books to the value of \$200; all necessary household, table and kitchen furniture, which includes all articles used for the comfort of the debtor or his family; and provisions and fuel actually provided for individual or family use and sufficient for two months; one sewing machine not exceeding in value \$100, in actual use by the debtor or his family; also one horse, two cows with their calves, two swine and fifty domestic fowl. In addition to the above, a farmer can claim the farming utensils not exceeding \$600 in value; two oxen, or two horses or mules and their harness, two cows, one cart or wagon, and food for such stock for three months; \$200 worth of seed, grain or vegetables, actually provided for the purpose of sowing or planting; the tools, instruments or books of any mechanic, physician, dentist, lawyer or clergyman; to a miner, his dwelling, not exceeding \$500 in value, all his tools and machinery necessary for carrying on his vocation, not exceeding \$500 in value, and one horse or mule, or two oxen and their harness, with their food for three months. There is exempt also one horse, mule or two oxen, vehicle and harness belonging to a physician or clergyman, used in making professional visits, with food for such stock for three months. Wages of the debtor earned at any time within thirty days next preceding levy, provided they are necessary for the use of his family residing in the state, supported wholly or in part by his labor, are exempt.

## NEBRASKA.

Heads of families are entitled to have exempt a homestead not exceeding in value \$2,000, consisting of a dwelling in which the plaintiff resides, together with the appurtenances thereunto belonging, and one hundred and sixty acres of land on which the same is situated, or, at the option of the plaintiff, two contiguous lots in any incorporated city, town or village. Such exemption, however, does not extend to mechanics' or laborers' liens in regard to mortgages executed by both husband and wife. If the claimant has no homestead as above, he shall have exempt \$500 in personal property. In addition to this there is likewise exempt the family bibles, pictures, school books and library; a pew in a place of worship; a lot in any burial ground; all necessary wearing apparel of the debtor and his family; all beds, bedsteads and bedding necessary for the use of such family; all stoves and appendages not to exceed four; all cooking utensils and other household furniture not herein enumerated, to be selected by the debtor, not exceeding in value \$100; also one cow, three hogs, all pigs under six months old, and if the debtor be engaged in agriculture, in addition to the above, one yoke of oxen, or a pair of horses in lieu thereof, ten sheep and the wool therefrom, either raw or manufactured, all necessary food for the stock herein mentioned for three months; one wagon, cart or dray, two plows and one drag; the necessary gearing for the team, and other farming implements not exceeding \$50 in value; the provisions necessary for the support of debtor and family, and fuel for six months. Any mechanic, miner or other person, whether the head of a family or not, shall have exempt the tools and instruments used and kept for his trade or business, and any professional man likewise shall have his library and implements exempt. In addition to the foregoing, every resident of the state who became disabled in the service of the United States shall have exempt from levy or attachment all pension money received, and all property purchased or improved therewith, not exceeding \$2,000 in value.

It is provided by the laws of this state that the phrase "head of a family" shall include the following persons: The husband or wife when the claimant is a married person, every person who is residing on the premises with him or her, and under his care or maintenance, that is to say, either his or her minor child, or the minor child of his or her deceased wife or husband, or the minor brother or sister, or a minor child of a deceased brother or sister, or a father, mother, grandfather or grandmother, or the father, mother, grandfather or grandmother of a deceased husband or wife, or an unmarried sister, or any other of the relatives mentioned above who have attained the age of majority and are unable to take care of or support themselves.

These exemptions do not apply where execution or attachment has issued for clerks', laborers' or mechanics' wages, or for money due and

owing by an attorney-at-law for money or other valuable considerations received by said attorney for any person. The wages of any laborer, mechanic or clerk who is the head of a family are likewise exempt.

#### NEVADA.

Except upon judgments for the recovery of the purchase price, or upon a judgment rendered upon a mortgage given upon the same, the following property is exempt from execution: Chairs, tables, desks and books to the value of \$100; necessary household table and kitchen furniture, including stove, stovepipe and stove furniture; wearing apparel; beds, bedding and bedsteads; and provisions and firewood actually provided for individual or family use, sufficient for one month. Farming utensils or instruments of husbandry; also two oxen, two horses or mules, and their harness; two cows; one cart or wagon; and food for such animals for one month; also all seed, grain or vegetables reserved for the purpose of planting or sowing within the ensuing six months, not exceeding the value of the sum of \$200. The tools and implements of a mechanic or artisan necessary to carry on his trade; the instruments and chest of a physician, surgeon, surveyor or dentist, necessary to the exercise of their professions, their scientific and professional libraries; the law library of an attorney, and the libraries of ministers of the Gospel; the dwelling of a miner, not exceeding the value of \$500, together with the implements and appurtenances necessary to carry on any kind of mining, of a value not to exceed the aggregate sum of \$500, together with two horses, mules or oxen, with harness and food for such animals for one month, necessary for mining operations. Two horses, mules or oxen, their harness and one cart or wagon, by which a carman, huckster, peddler, teamster or other laborer actually earns his living; one horse with vehicle and other equipments used by a physician or surgeon or minister of the Gospel in making professional visits, together with food necessary for such animals for one month; one sewing-machine in actual use, not to exceed the value of \$150; the fire-engines, hooks and ladders and all other implements and apparatus thereunto appertaining, and all furniture and uniforms of any company existing under the laws of this state; the horses and other equipments of officers of military companies; all arms required by law to be kept by any person; all school properties and the other estate or property of the state, or of a county or incorporated town.

A homestead exemption of \$5,000 is allowed, if the same be owned by the head of a family. But this exemption does not extend to purchase-money of the homestead property, or improvements made on the same, or for taxes due, or for the payment of a mortgage, if the same has been properly executed by the husband and wife.

## NEW HAMPSHIRE.

The wife, widow and children of every person who is the owner of a homestead, or of any interest therein, are entitled to so much thereof as does not exceed the value of \$500, as against creditors, grantees or heirs of such persons during the lives of the wife or widow, and during the minority of the children. If the wife owns a homestead, at her decease the life estate of the surviving husband not exceeding the value of \$500 is exempt to him. A homestead of the value of \$500 is also exempt to any unmarried person owning the same. (Pub. Stat., ch. 188.)

There is likewise exempt from attachment and from liability to be taken upon execution the following goods and property: Necessary wearing apparel and bedding and household furniture to the value of \$100; bibles and school books in use in the family, and a library of the value of \$200; one cow; six sheep and their fleeces; one hog; one pig, and the pork of the same when slaughtered; domestic fowls not exceeding the value of \$50; tools used by the debtor in his occupation to the value of \$100; four tons of hay; provisions and fuel to the value of \$50; beasts of the plow not exceeding one yoke of oxen or a horse; the uniform, arms and equipments of every officer or private in the militia; the debtor's interest in one pew in any meeting-house and in one lot in any cemetery. (Pub. Stat., ch. 120, sec. 2.)

## NEW JERSEY.

The goods and chattels, not exceeding in value the sum of \$200, exclusive of all wearing apparel, and all wearing apparel the property of any debtor having a family residing in this state, are exempt from seizure by virtue of execution or other civil process, except for the purchase-money thereof. (Rev. Stat., p. 236.) In addition to the above, by conforming to the provisions of the homestead exemption act, the land and building thereon occupied as a residence and owned by the debtor, being a householder and head of a family, to the value of \$1,000, may be exempted from sale or execution for debt. But the requirements of this act are such that but little practical use is made of this homestead exemption in the state of New Jersey.

## NEW MEXICO.

The husband and wife, or the widow or widower living with an unmarried minor son, may hold a homestead not exceeding \$1,000 in value; and if not the owner of the homestead, may hold other property to be selected by them not exceeding the value of \$500.

Every person who has a family, and every widow, may hold the following property exempt from execution, attachment, or sale, for all species of indebtedness except taxes: Wearing apparel, bedsteads, beds and bedding, one cooking stove and pipe, one heating stove and pipe,

and fuel sufficient for thirty days; one cow or household furniture, not exceeding \$40 in value; two swine or the pork therefrom, or household furniture not exceeding \$15 in value; six sheep, the wool therefrom shorn, and all clothing or other articles manufactured therefrom, or household furniture not exceeding \$20 in value, together with sufficient food for such animals for not exceeding sixty days. Bibles, hymn-books, testaments, school and miscellaneous books used in the family, and all the family pictures. Provisions for the use of the family, which shall not exceed in value the sum of \$50; other articles of household and kitchen furniture, not exceeding in value \$200; one sewing machine; one knitting machine; one gun or pistol; the tools or implements of the debtor necessary for carrying on his trade, whether the same be mechanical or agricultural, not exceeding \$150 in value. The personal earnings of the debtor for sixty days next preceding his application for such exemption, when it is made to appear by affidavit of the debtor or otherwise that such earnings are necessary for the support of such debtor, his wife or his family, provided that such exemption shall not apply to debts incurred for manual labor or for the necessities of life furnished to the debtor or his family. The articles, specimens and cabinets of natural history or science, whether animal, vegetable or mineral, except such as may be intended for show or exhibit for money or pecuniary gain. Every person engaged in the business of trading shall, in addition to the above exemptions, hold one horse, one set of harness, dray or wagon. Every head of a family engaged in the business of agriculture shall, in addition to the above exemptions, hold as exempt two horses or one yoke of cattle, with the necessary gearing, and one wagon. Every head of a family engaged in the practice of medicine shall, in addition to the above exemptions, have one horse with bridle and saddle, books, medicines and instruments pertaining to his profession. Every unmarried woman shall have exempt wearing apparel of a value not exceeding \$150, one sewing machine, one knitting machine, and, if engaged in teaching music, one piano or organ; also one bible, one hymn-book, one album, and other books not to exceed in value \$50. Any person the head of a family engaged in the practice of the law shall, in addition to the above articles, hold exempt books pertaining to his profession not exceeding the sum of \$500 in value. Any beneficiary fund not exceeding the sum of \$5,000 appropriated by any benevolent association or society to the family or any member of the family of a deceased brother, shall not be liable for the debts of such deceased brother. The regalia, insignia of office, journals of proceedings, account books and private work of any benevolent society shall not be liable for the debts of such society.

The property used by a municipal corporation or fire company for the purpose of extinguishing fires shall be exempt from execution or sale to satisfy any judgment or order arising upon contract or otherwise.

The chattels above referred to are to be selected by the debtor at any



time before sale, and where any dispute arises as to the value or amount of personal property, it shall be estimated and appraised under oath by two disinterested householders selected by the officers holding the writ of execution or attachment.

#### NEW YORK.

The lot and buildings of value not to exceed \$1,000, owned and occupied as a residence by a householder having a family, are exempted if designated and recorded as such homestead property in the office of the clerk of the county where it is situated; but such property is not exempted from sale for the non-payment of taxes or assessments, or from sale or execution for debts contracted before the property was so designated as a homestead, or for the purchase-money thereof. Such exemption continues after the owner's death for the benefit of the widow and family so long as any of them continue to occupy such homestead until the death of the widow, and until the youngest child shall have attained his majority. No release or waiver of such exemption is valid unless the same be in writing, and be subscribed by the householder and by him acknowledged and recorded. The husband and wife may jointly mortgage the homestead. (C. P., sec. 1404.) The exemption is not affected by ceasing to occupy the exempted property as a residence for a period not to exceed one year, where such failure to occupy is the result or consequence of injury to or destruction of the dwelling-house. A married woman is entitled to the same homestead exemption as a householder having a family. (C. P., secs. 1397-1401.)

There is likewise exempt from sale on execution against a householder having a family, or a woman, certain property absolutely and certain property in addition, which property additionally exempted is subject to execution upon a judgment recovered for the purchase price of any such exempted property. The property absolutely exempt consists of all spinning wheels, weaving looms, stoves set up or kept for use in a dwelling-house, one sewing machine, the family bible, family pictures, school books, other books of a family library to the value of \$50; the family seat or pew in a place of public worship; ten sheep, the fleeces, yarn and cloth therefrom; one cow, two swine, and necessary food for them or necessary food actually provided for the family's use; sixty days' supply of oil, candles and fuel; all necessary wearing apparel; beds, bedsteads, bedding, and cooking utensils; one table, and certain table china, etc.; one pair andirons, one coal scuttle, one shovel, one pair tongs, one lamp and one candle-stick; also the tools and implements of a mechanic necessary to his trade, not to exceed in value the sum of \$25; the additional articles of household furniture, wagon, tools and team, professional instruments, furniture and library, not exceeding in value the sum of \$350, together with sixty days' necessary food for team. There is also exempt one-fourth of an acre of land if it be set apart as a family burying ground; also the equipment, pay, bounty and pension of a person in

the military or naval service of the state or of the United States, together with all property purchased with pension money. (See Laws of 1891, ch. 112; C. P., secs. 1390-1392, 2463.) The earnings of a judgment debtor for his personal services rendered within sixty days preceding the levy of the execution or attachment, where the same are necessary for the use of his family, in whole or in part supported by his labor, cannot be reached by supplementary proceedings. (C. P., sec. 2463.) Insurance money, etc., paid or to be paid to a member of such insurance association, or to the widow of a member of a life or casualty corporation doing business upon a co-operative or assessment plan, cannot be reached for any debt or liability incurred before such money was paid. (Laws of 1897, ch. 345.)

#### NORTH CAROLINA.

Personal property to the value of \$500 to be selected by any resident of this state is exempted from execution. There is likewise exempted a homestead and the dwelling and buildings thereon, not to exceed in value the sum of \$1,000, to be selected by the owner thereof, or, in lieu thereof, any lot in the city, town or village with the dwelling and buildings used thereon owned and occupied by any resident of the state, not exceeding in value the sum of \$1,000. This exemption, however, does not apply to debts due for the purchase-money of such homestead, nor does it apply to mechanics' or laborers' liens or to taxes thereon. (Code, secs. 501-524.) The widow and infant children of the deceased debtor are entitled to the benefit of this homestead exemption until the youngest child shall have reached the age of twenty-one years. During the existence of such homestead or homestead interest, the statute of limitations does not run against a judgment against the owner of such homestead or homestead interest. If the owner of such land be unembarrassed he may convey the same absolutely or mortgage the same free of all homestead rights without the assent of his wife, except in the following cases: (1) Where the land in question has been allotted to him as a homestead either upon his own petition or by an *officer* in accordance with the law; (2) where no homestead has been allotted to him, but there are judgments against him which constitute a lien upon the land, and upon which execution might issue and make it necessary to have his homestead allotted; (3) when no homestead has been allotted, but there has been a mortgage reserving an undefined homestead, which mortgage constitutes a lien upon the land and cannot be foreclosed without allotting the homestead; (4) where the conveyance is fraudulent as to creditors and no homestead has been allotted in other lands.

If the husband make a fraudulent conveyance of his lands (the wife not joining in the deed), the proceedings of creditors to have the deed vacated inure to the benefit of all of the fraudulent grantor's family, because the creditors ultimately subject the reversion to the payment of their demands, while the wife and children of the debtor get the homestead in the land.

## NORTH DAKOTA.

There is exempt to every head of a family a homestead which shall not exceed in value the sum of \$5,000, and if it be in a town plat, not exceeding two acres, and if not, not to exceed one hundred and sixty acres, to be selected and appraised as provided by the statute. This exemption, however, does not apply to debts secured by mechanics' or other laborers' liens for work or labor done or material furnished exclusively for the improvement of such homesteads. Nor does it extend to debts secured by mortgage on the premises executed and acknowledged by both husband and wife or by an unmarried debtor, nor does it extend to debts created for the purchase price thereof, nor to any taxes accrued and levied upon the same.

The term "head of a family" is held to include: (1) The husband or wife, when the claimant is a married person, provided that in no case shall both husband and wife be entitled each to a homestead; (2) any person who has resided on the premises with him or her and under his or her care and maintenance, either as his or her minor child or the minor child of his or her deceased wife or husband, whether by birth or adoption, or a minor brother or sister, or the minor child of a deceased brother or sister, or a father, mother, grandfather or grandmother of the father or mother, grandfather or grandmother of the deceased husband or wife, or an unmarried sister, or any other of the relatives mentioned above who have attained the age of majority and are unable to take care of or support themselves. The homestead of a married person cannot be conveyed or incumbered unless the instrument by which it is conveyed or incumbered is executed and acknowledged by both husband and wife.

The following property is absolutely exempt to the head of a family from attachment or mesne process, and from levy and sale on execution and from any other final process issued out of any court: The family pictures, a pew or other sitting in any house of worship, a lot or lots in any burial ground, the family bible and all school books used by the family, and all other books used as a part of the family library, not to exceed in value the sum of \$100; all wearing apparel and clothing of the debtor and his family; all provisions for the debtor and his family necessary for one year's supply, either provided or growing, or both, and fuel necessary for one year; the homestead as created and defined and limited as above set forth. In addition to the above mentioned property the head of a family may, by himself or his agent, select from all other of his personal property not absolutely exempt goods, chattels, merchandise, money or other personal property not to exceed in the aggregate the sum of \$1,500 in value, which shall also be exempt. Instead of the \$1,500 exemption as above set forth, the head of a family may select and choose the following property, which shall then be exempt, to wit: All miscellaneous books and musical in-

struments for the use of the family, not to exceed in value the sum of \$500; all household and kitchen furniture, including bed, bedsteads and bedding, used by the debtor and his family, not to exceed the sum of \$500 in value; and in case the debtor shall own more than \$500 worth of such property he may select therefrom such articles to the value of \$500, leaving the remainder subject to legal process; three cows, ten swine, one yoke of cattle and two horses or mules, or two yoke of cattle or two span of horses or mules, one hundred sheep and their lambs under six months old, and all wool of the same and all clothing or yarn manufactured therefrom; the necessary food for such animals for one year, either provided or growing, or both, as the debtor may choose: also one wagon, one sleigh, two plows, one harrow and farming utensils, including tackle for teams, not exceeding in value the sum of \$300; the tools and implements of any mechanic, whether of age or not, if the same be used and kept for the purpose of carrying on his trade or business, and in addition thereto the stock in trade not to exceed \$200 in value; the library and instruments of any professional person, not exceeding \$800 in value. No personal property is absolutely exempt from execution for laborers' or mechanics' wages, or for physicians' bills, or for a debt incurred for property obtained under false pretenses.

Except that class of personal property which is made absolutely exempt as above set forth, the exemptions do not apply to a corporation for profit, to a non-resident, or a debtor who is with his family removing from the state or who has absconded taking his family with him. A partnership firm can claim but one exemption of \$1,500 in value, or the alternative property when so applicable, instead thereof out of the partnership property, and not a *separate* exemption for each partner. After the debtor's death such exempt property is set aside for the benefit of the surviving wife or husband or the minor children, and is not liable for any prior debts or claims against the deceased, except when there are no assets available for the payment of the necessary expenses of his last illness, funeral charges and the expenses of administering upon his estate; provided, however, that no property is exempt from execution for the purchase-money or any part thereof.

#### OHIO.

A husband and wife living together, a widow or widower living with an unmarried daughter or unmarried minor son, may hold exempt from sale on judgment or order a family homestead not to exceed in value the sum of \$1,000; and the husband, or, in case of his failure or refusal to do so, the wife, shall have the right to make the demand therefor. But neither husband nor wife can make such demand if the other already has a homestead. When the homestead is of a greater value and is not, in the opinion of the appraisers, susceptible of division, the plaint-

iff in the execution is entitled to the annual rental value over \$100 until the debt, cost and interest are paid. (Rev. Stat., secs. 5435, 5438, 5439.)

The husband and wife living together, the widower living with an unmarried daughter or minor son, every widow and every unmarried female having in good faith the care, maintenance and custody of any minor child or children of the deceased relative, who are residents of the state and county, and who are not the owners of a homestead, may, in lieu thereof, hold exempt from levy and sale real or personal property to be selected by such person, his agent or attorney, at any time before the sale, not exceeding \$500 in value, in addition to the amount of chattel property that is by law exempt. (Rev. Stat., sec. 5441.)

It is provided that when a married woman sues or is sued, like proceedings shall be had and judgment rendered and enforced as if she was unmarried, and her property and estate shall be liable for the judgment against her, but she shall be entitled to the benefit of all exemptions. (Rev. Stat., sec. 5319.) Under this section of the statute, the supreme court of the state has held that a married woman is entitled to the benefit of all exemptions allowed by law to the heads of families, though she be living apart from her husband, and have no child or children living with her or supported by her. (See 52 Ohio St. 468.) The provisions above recited concerning the homestead or the \$500 exemption in lieu thereof do not extend to a judgment rendered upon a mortgage executed by the debtor and his wife, nor to claims for manual work and labor less than \$100, nor does it extend in such wise as to impair a lien by mortgage or otherwise of the creditor for the purchase-money of the premises in question, nor a lien of any mechanic or other person under any statute of this state for materials furnished or labor performed in the erection of any dwelling-house thereon, nor for the payment of taxes due thereon. (R. S., secs. 5435, 5440.)

In addition to the homestead provisions as above set forth, the following personal property is likewise exempt: Wearing apparel not exceeding in value the sum of \$100, one sewing machine, one knitting machine, a bible and other books not exceeding in value the sum of \$25 (R. S., sec. 5426); any beneficiary fund not exceeding the sum of \$5,000 paid by any benevolent association to the family of any deceased member, or to any member of such family, is exempt from the payment of any debts of such deceased member. (R. S., sec. 5427.) Every person who has a family and every widow may hold the following property exempt: The wearing apparel of such persons or family; necessary beds and bedding; two stoves and fuel actually provided sufficient for sixty days' use; one cow, or household furniture not exceeding \$35 in value; two swine, or household furniture not exceeding \$15 in value; six sheep, or furniture not exceeding \$15 in value, and sufficient food for such animals for sixty days; the bibles and school books used in the family, and all family pictures; provisions actually provided and designated for the use of such

family not exceeding \$50 in value, and other articles of household and kitchen furniture or either, necessary for such person or family, not to exceed in value the sum of \$50; one sewing machine, one knitting machine, all tools and implements of the debtor necessary for carrying on his or her trade or business, whether the same be mechanical or agricultural, of a value not to exceed \$100; the personal earnings of the debtor, and the personal earnings of his or her minor child or children for three months, whenever it is made to appear that such earnings are necessary for the support of such debtor or of his or her family; all articles, specimens and cabinets of natural history or science, except such as are to be kept or intended for exhibition for pecuniary gain. (R. S., sec. 5430.) In addition to the above exemptions every drayman may hold one horse, harness and dray; every farmer one horse or yoke of oxen with the necessary gearing for the same, and one wagon; every physician one horse, one saddle and bridle, and also books, medicines and instruments pertaining to his profession not exceeding the sum of \$100 in value. (R. S., secs. 5430, 5431.)

#### OKLAHOMA.

To every head of a family residing in this territory the following property is exempt: One hundred and sixty acres of land or a lot in a town or city not exceeding one acre; all household furniture; all lots in a cemetery; all implements of husbandry used on the homestead; all tools, apparatus and books belonging to and used in any trade or profession; the family library and all family portraits and pictures and wearing apparel; five milch cows and their calves under six months old; one yoke of work oxen with necessary yoke and chains; two horses or mules and one wagon, cart or dray; one carriage or buggy; one gun; ten hogs; twenty head of sheep; all saddles, harness and bridles necessary for the use of the family; all provisions and forage on hand or growing for home consumption and for the use of exempt stock for one year; all current wages and earnings for personal or professional services earned within ninety days next preceding the levy of the execution or attachment.

To persons who are not the heads of families the following property is exempt: Lots in a cemetery; all wearing apparel; all tools, apparatus and books belonging to any trade or profession; one horse, bridle and saddle or one yoke of oxen; current wages for personal services.

None of the exemption provisions are applicable to debts due for the wages of any clerk, laborer, mechanic or servant. All pension money is likewise exempt.

#### OREGON.

The following property is exempt from execution, provided the same be selected and reserved by the judgment debtor or his agent at the time

of the levy of the execution or attachment, or so soon thereafter and before the sale as the same shall become known to him. And if not so selected and reserved it is not exempt from execution.

A homestead to the value of \$1,500. If the homestead exceed \$1,500 in value, the creditor may pay the debtor that amount and proceed to sell the property, adding the said sum of \$1,500 to his lien; provided, however, that the said sum of \$1,500 so paid by the judgment creditor to the debtor shall likewise be exempt. (Laws of 1898, p. 94.)

Under the same conditions the following personal property is also exempt: Books, pictures and musical instruments owned by any person to the value of \$75; necessary wearing apparel owned by any person to the value of \$100, and, if such person be a householder, if each member of his family to the value of \$50; tools, implements, apparatus, team, vehicle, harness or library necessary to enable any person to carry on his trade, occupation or profession by which such person habitually earns his living, of a value not to exceed \$400; also sufficient food to support such team sixty days. The word "team" as used in the Oregon statutes does not include more than one yoke of oxen, or a span of horses or mules, as the case may be. The following property, if owned by a householder and if actually used or kept for use by and for his family, or when being removed from one habitation to another on a change of residence, is exempt: Ten sheep, with one year's fleece or the yarn or cloth manufactured therefrom; two cows and five swine; household goods, furniture and utensils to the value of \$300; also food sufficient to support such animals, if any, for three months, and provisions actually provided for family use and necessary for the support of such householder and family for the period of six months. There is exempt the seat or pew occupied by any householder or his family in any place of public worship; the property of the state or any county, incorporated city, town or village therein, or any other public or municipal corporation of like character. Such exemptions do not, however, apply to judgments recovered for the purchase price of the articles mentioned as being exempt. (Code of Oregon, sec. 282.)

The earnings of a judgment debtor for personal services rendered at any time within thirty days next preceding a judgment against a *garnishee* shall not be included in such judgment whenever it shall be made to appear that such earnings are necessary for the use of the family supported in whole or in part by his labor. (Code of Oregon, sec. 818.)

There is likewise exempt from taxation to every white male citizen above the age of sixteen years, provided the same be kept for his own use and defense, the following fire-arms: one revolving pistol, and either a rifle, a shot-gun, single or double-barreled, or a musket.

#### PENNSYLVANIA.

Real or personal property to the value of \$300, to be selected by the debtor, and in addition thereto all wearing apparel, bibles and school books are

exempt from sale on execution or distress for rent. This right of exemption survives to the widow out of the estate of the husband upon the husband's decease. A sewing machine belonging to a seamstress is exempt, as are also all leased musical instruments, if the lessor give notice of the leasing to the landlord. A debtor may waive the benefit of the exemption laws by an express agreement, or by fraudulent concealment of the property he may be deprived of the benefit of such exemptions. A non-resident cannot avail himself of the exemption law, nor can a copartnership nor a corporation. No exemption is allowed when the judgment is allowed for manual labor and is of the sum of \$100 or less, nor when the judgment is for four weeks' board or less. (See Act March 4, 1887, and Act April 4, 1889.)

#### RHODE ISLAND.

The professional library of a professional man in actual practice; working tools of the value of \$200; household furniture of the value of \$300; books of the value of \$300; one cow, one hog, one pig, and one and one-half tons of hay, all chains and machinery; ordinary wages of the value of \$10, except for debts contracted for necessities; all wages of the wife and minor children of any debtor.

#### SOUTH CAROLINA.

To the head of a family a homestead exemption is allowed consisting of \$1,000 worth of real estate with the yearly produce thereof, and \$500 in personal property. To a person not the head of a family an exemption is allowed consisting of wearing apparel, tools and implements of trade not to exceed the sum of \$300 in value. Before assignment of the homestead it cannot be waived except by conveyance or mortgage, and then only in favor of the mortgage debt. After assignment the homestead cannot be waived unless the deed is executed by both husband and wife. The benefit of the exemption laws does not extend to obligations contracted for the purchase of the homestead or for the making of improvements thereon, and the yearly products of the said homestead shall not be exempt from the payment of obligations contracted in the production of the same.

#### SOUTH DAKOTA.

Homesteads are exempt from execution. If the same be situated within a town plat it shall not exceed one acre in extent; and if it be not within a town plat it shall not exceed more than one hundred and sixty acres in farming land; and in neither case shall it exceed in value the sum of \$5,000. Such homestead must be occupied as a residence by the debtor and his family. If the homestead exceed in value the sum of \$5,000 it may be reached by the execution creditor as against debts



incurred prior to March 7, 1890. The homestead, to the extent of one hundred and sixty acres in the country or one acre in town, is exempt without any limitation as to value. Such exemption continues after the debtor's death for the benefit of the surviving husband or wife and children, and, if both husband and wife be dead, until the youngest child become of age. (Rev. Code, ch. 88; C. L., ch. 28.)

The following chattels are absolutely exempt: The family pictures, family library, not exceeding in value \$200; all wearing apparel of the debtor and his family; one year's supply of fuel and provisions; and in addition to the above absolute exemptions the debtor may select out of his personal property as exempt, if a single person, articles to the value of \$300. And if the head of a family, he may select such articles to the value of \$750. But as against debts incurred prior to March 7, 1890, the exemption extends to the value of \$1,500, whether the debtor be a single person or the head of a family.

No personal property, except such articles as are above mentioned as absolutely exempt, is exempt from execution for laborers' or mechanics' wages or physicians' bills, nor for the purchase-money of the same property, nor for a debt incurred for property obtained under false pretenses. A partnership has but one exemption out of partnership property. Neither a corporation for profit, nor a non-resident, nor a debtor who is in the act of removing with his family from this state, has any exemption of personal property, except the articles enumerated above as being absolutely exempt. (*Vide* Code Civ. Proc., secs. 822-834; C. L., secs. 5126-5149.) After the debtor's death such exempt property is set apart for the benefit of the surviving wife or husband, or the minor children, and is not liable for any prior debts or claims against the decedent, except when there are no assets available for the payment of the necessary expenses of his last illness, funeral charges and the expense of administration upon his estate. (Prob. C., sec. 129; C. L., sec. 5779; Laws of 1890, ch. 86.)

All moneys received by a widow or children for insurance upon the life of any person who, when living, was the head of a family, shall be forever exempt. (Laws of 1890, ch. 86.)

#### TENNESSEE.

A homestead or real estate in the possession of or belonging to each head of a family, and the improvements thereon to the value of \$1,000, shall be exempt from sale under legal process during the life of such head of a family, and shall inure to the benefit of his widow and be exempt from sale in any way at the instance of any creditor or creditors during the majority of the children occupying the same and until the youngest child reaches the age of twenty-one years; provided, that such real estate shall not be alienated without the joint consent of the husband and wife when that relation exists, to be evidenced by conveyance duly executed as required by law for married women; and further pro-

vided, that such real estate shall not be exempt from sale for the payment of public taxes legally assessed upon it, or from sale for the satisfaction of any debt or liability contracted for its purchase, or liability incurred for improvements made thereon. (Act of 1870, 2d sess., ch. 80, sec. 1; Code (M. & V.), sec. 2935.) Each head of a family owning real estate shall have the right to elect where the homestead or said exemption shall be set apart, whether living on the same or not. These provisions apply as well to equitable as to legal interests. (Ibid., sec. 2; Code (M. & V.), sec. 2937.)

The homestead exempt in the possession of a husband shall upon his death go to his widow during her natural life, with the products thereof for her own use and benefit and that of her family who reside with her, and upon her death it shall go to the minor children of the deceased husband, free from debts of the father or mother or of said children; and upon the death of said minor children or their arrival at age, the same may be sold and the proceeds distributed among all the heirs at law of the deceased head of the family, according to the laws of descent and distribution in force in the state of Tennessee. (Ibid., sec. 6; Code (M. & V.), sec. 2943.) Upon the death of the head of a family without widow or minor children said land shall be sold for the payment of the debts legally established against the estate; and the remainder distributed among his heirs according to the rules of descent in force at the time in this state. (Ibid., sec. 7; Code (M. & V.), sec. 2945.)

The following personal property is exempt from execution, seizure or attachment in the hands of every male citizen of the age of eighteen years and upward, and every female who is the head of a family, to wit: One gun; to every single woman who uses it for a livelihood, one sewing-machine; to every mechanic engaged in the pursuit of his trade or occupation, one set of mechanic's tools such as are usual and necessary to the pursuit of his trade; the wages of every mechanic and laboring man to the value of \$30, and the lien created by service or garnishment shall only affect that portion of the laborer's wages that may be due at the time service is made, and shall not affect any future wages; in the hands of heads of families, a number of household articles, etc., too large to be set out in full (Code (M. & V.), sec. 2931); if the head of the family be engaged in agriculture, there shall be further exempt two plows, two hoes, one grubbing-hook, one cutting-knife, one harvest-cradle, one set of plow gears, one pitchfork, one rake, three iron wedges, and ten head of stock hogs.

Exempt property shall be exempt from seizure in criminal as well as civil cases, but shall not be exempt from distress or sale for taxes or a judgment for failure or refusal to work on the public roads, or for fines and costs for voting out of the civil district or the ward in which the voter lives, or for carrying deadly or concealed weapons, or for giving away or selling intoxicating liquors on election days. (Code (M. & V.), secs. 2932, 2933.)

## TEXAS.

By the constitution of 1875 the homestead of a family not in a town or city is made to consist of not more than two hundred acres of land, which may be in one or more parcels, together with the improvements thereon. A homestead in a city, town or village is made to consist of the lot or lots not to exceed \$5,000 in value at the time of designation, without reference to the improvements thereon; provided, the same shall be used for the purpose of a home or as a place of exercising the calling or business of the head of the family. The homestead is exempted from forced sale for payment of all debts except for the purchase-money or the taxes due thereon, or for work and material used in constructing improvements thereon; and if the claim be for materials used in the construction of improvements thereon, the contract for such work and materials must have been made with the consent of the wife given in the same manner as she is required to give her consent under mortgages or deeds of trust. In addition to these provisions, it is provided that in case of the death of a person leaving a wife or children, or either, there shall be granted out of the estate a sum sufficient to support them for one year; also, if the exempted articles provided for by the law do not exist in kind, the property of the estate may be sold for cash to raise their value, not to exceed \$5,000 for a homestead and \$500 for other exempted property.

To every family there is also exempted the following personal property: All household and kitchen furniture; any lot or lots used for burial purposes in a cemetery; all implements of husbandry; private or public libraries and family bedsteads and pictures; five milch cows and calves; two yoke of work oxen; two horses and one wagon; one carriage or buggy; one gun; twenty hogs; twenty head of sheep; all provisions and forage on hand for home consumption; all bridles, saddles and harness necessary for the use of the family. And to every citizen not a head of a family there is exempt one horse, bridle and saddle; all wearing apparel; any lot or lots for burial purposes in the cemeteries; all tools, apparatus and books belonging to his trade or profession. Current wages for personal service are not subject to garnishment.

## UTAH.

A homestead, consisting of lands and appurtenances, which may be in one or more localities, but shall not exceed in value the sum of \$1,500, is exempt to the head of a family, and the further sum of \$500 for his wife, and the further sum of \$250 for each other member of his family; chairs, tables and desks to the value of \$200; the library of the judgment debtor; musical instruments in actual use in the family; necessary household furniture to the value of \$300; sewing machine; family pictures; carpets in use; provisions for three months; two cows with

their sucking calves; two hogs with their sucking pigs; all wearing apparel; all beds and bedding; and, if the family consists of five or more members, the further exemption of two cows and calves.

The farming implements of a farmer not exceeding the value of \$300; two oxen, or two horses, or two mules, and their harness; one cart or wagon; all seed grain and vegetables actually provided or on hand for the purpose of planting or sowing at any time within six months, provided the value thereof does not exceed \$200; the crops and the proceeds thereof, not to exceed the value of \$200.

The tools and implements of mechanics or artisans of the value of \$500 or less; necessary instruments and chests of a physician, surgeon or dentist, together with their professional libraries. The law libraries and office furniture of attorneys and judges; the libraries of ministers; and the typewriting machine of a stenographer; the cabin of a miner not exceeding the value of \$500, with his necessary tools and appliances, of a value not to exceed \$500. To every ferryman there is exempt one ferry-boat with the necessary tackle, not exceeding in value \$500; two oxen or two horses or mules and their harness and cart or wagon; one dray or truck by the use of which a drayman, huckster, peddler, hackman or teamster or other laborer actually earns his living; the horse and vehicle of a physician or minister; one-half of the wages of the judgment debtor for personal services rendered at any time within sixty days next preceding the levy of the execution. If said sum is \$1 a day or less, no part shall be liable to execution; all moneys and annuities growing out of life insurance, if the annual premium paid does not exceed \$00.

The exemption laws do not extend to executions issued upon judgments for the purchase price of any exempt article or any portion thereof, or upon judgment for foreclosure of mortgage or for mechanics' or laborers' liens. Non-residents and those who are about to depart from this state, cannot claim the benefit of these exemption laws.

#### VERMONT.

To each householder there is exempted a homestead which shall not exceed in value the sum of \$500. The homestead is to consist of a dwelling-house and the lands appertaining thereto and shall be used or kept as a homestead. It shall not exceed in value the sum of \$500. Such homestead cannot be mortgaged by the owner, if a married man, unless his wife joins in the mortgage. This homestead goes, on the death of the owner, to his widow and minor children, but the children's rights continue only until majority.

The exemptions of personalty consist of wearing apparel, bedding, tools, arms, household furniture, sewing machine, one cow of a value not to exceed \$100, one swine or the meat of one swine, ten sheep, with one year's product in wool, yarn or cloth, one cow, two oxen or horses,

with one year's forage for such animals, ten cords of wood and five tons of coal, twenty bushels of potatoes, harness and equipments, ten bushels of grain, one barrel of flour, three swarms of bees and hives, two hundred pounds of sugar, gravestones, bibles and other books used in the family, a pew in the church, poultry to the amount of \$10, professional books of physicians, clergymen and attorneys not to exceed \$200 in value; one two-horse wagon, one one-horse wagon or one ox cart, as the debtor may choose; one sled or one set of traverse sleds; two harnesses; two halters; two collars; one plow and one yoke, team and equipments not to exceed \$200 in value. No personal property is exempt upon suit for the purchase-money thereof or for repairs made thereon.

#### VIRGINIA.

The homestead provision in this state is as follows: Every householder residing in this state shall, in addition to the property or estate which he is entitled to hold exempt from levy, distress or garnishment, be entitled to hold exempt from levy, seizure, garnishment or sale under any execution, order or process issued on any demand for any debt or liability on contract, his real or personal estate, or either, to be selected by him, including money and debts due him, to the value of not exceeding \$2,000; provided, that no such exemption shall extend to any execution, order or other process issued on any demand in the following cases: 1st, for the purchase price of said estate or any part thereof; 2d, for the services rendered by a laboring person or a mechanic; 3d, for liabilities incurred by any public officer of a court or fiduciary or by any attorney at law for money collected by him; 4th, for a lawful claim for any taxes levied or assessed; 5th, for rent; 6th, for the legal or taxable fee of any public officer or officer of court; 7th, for any debt or liability on contract as to which the debtor or party to the contract has waived as hereinafter provided, the exemption to which he is entitled under this section. (Code, sec. 8630.)

The homestead exemption, as this is called, may be waived by express stipulation in a bond, note or other evidence of contract, but there can be no waiver of the poor-law exemption; and a deed of trust upon such articles as are exempted by the poor-law exemption is void. The homestead exemption may be claimed on legal or equitable estates of any kind. The waiver shall be in the following words or their equivalent: "I (or we) waive the benefit of my (or our) homestead exemptions as to this obligation."

It is provided that a deed of the property claimed under this exemption shall be recorded; but the exemption may be claimed after suit and judgment as well as before. The property set apart as homestead exemption may be mortgaged or sold by the joint act of husband and wife; or, if the householder be unmarried, by his act alone. If the householder die without claiming the exemption, the right survives to the widow

and the infant children. If a widow claim dower or jointure, she cannot claim the home; but in such case the rights of the minor children therein are not impaired.

An unmarried man who kept house and had hirelings on his farm was held not to be a householder or head of a family within the meaning of this statute. (See *Calhoun v. Williams*, 82 Gratt. 18.)

In addition to this homestead exemption, as it is called, there is likewise exempt from levy or distress a long list of enumerated articles of personal property, to which no limitation is set as to value, but which appear to be absolutely exempt in kind. (See Code of 1887, ch. 178.) There is also exempt the wages owing to a laboring man who is a householder, provided the same do not exceed \$50 per month.

#### WASHINGTON.

Homesteads may be selected and claimed in lands and tenements with the improvements thereon not exceeding in value the sum of \$2,000. The premises thus included must be actually intended and used for a home by the claimants and must not be devoted exclusively to any other purposes. (Laws 1895, p. 112.) In order to select a homestead, the husband or other head of a family, or, in case the husband has not made such selection, the wife must execute and acknowledge, in the same manner as a grant of real property is acknowledged, a declaration of homestead in the manner provided by the statute, which must be duly recorded. (Laws of 1895, p. 112.)

The real and personal estate belonging to a married woman at the time of her marriage, and all she subsequently becomes entitled to in her own right, and all her personal earnings and rents and profits of such real estate, shall not be liable for her husband's debts so long as she or any minor heir of her body is living, but her property is liable for debts owing by her at the time of her marriage.

The following personal property is exempt: All wearing apparel; all private libraries not exceeding \$500 in value. In addition thereto, the following is allowed to a householder or head of a family: Beds, bedding and other household furniture not exceeding in value \$500; five swine; two cows with their calves; two hives of bees; thirty-six domestic fowls; fuel and provisions for six months' support. A farmer is allowed a pair of horses or mules and their harness, or two yoke of oxen and a wagon; also \$500 worth of farming implements in actual use, together with farming utensils in actual use not exceeding \$500 in value; also one hundred and fifty bushels of oats or barley; fifty bushels of potatoes; ten bushels of corn; ten bushels of peas; ten bushels of onions, for seedling purposes. A minister or lawyer is allowed a library worth \$1,000, together with his stationery and office furniture not exceeding \$200 in value. A physician is allowed his horse and vehicle, together with his library, not exceeding in value \$500, and also his instruments

and medicines used in practice to a value not to exceed \$200. To a teamster or drayman engaged in that business for the support of his family or himself, there is allowed his team consisting of one span of horses or mules or two yoke of oxen, or a horse or mule with harness, yokes, one wagon, truck or dray. To a mechanic, the tools and instruments used in his trade, not exceeding in value the sum of \$500. To persons engaged in lightering, one or more lighters, barges or scows and a small boat, to a value not more than \$250. In addition to the above, each householder is allowed personal property to the extent of \$1,000, provided that no property shall be exempt from execution for clerks', laborers' or mechanics' wages earned within this state, nor from execution issued upon a judgment against an attorney on account of any liability incurred by such attorney to his client on account of any money coming into his hands belonging to his client. The proceeds of all life and accident insurance are exempt from liability for any debt. Whenever property which is exempt from execution or attachment is insured and is destroyed by fire, the insurance money to an amount equal to the exempt property is likewise exempt. No property is exempt from execution issued upon a judgment recovered for the purchase price of such property. (Laws of 1897, p. 70; Laws of 1895, p. 185, sec. 1.) Any person making a general assignment for the benefit of creditors may reserve the property exempt by law from levy by execution or attachment. (Laws of 1897, p. 6.)

#### WEST VIRGINIA.

Any husband or parent residing in this state, or the widow or infant child of deceased parents, may hold a homestead of the value of \$1,000, provided such homestead is duly recorded before the debt against which it is claimed is contracted, and if so recorded it may be held free from execution as against debts created since August 23, 1872, except debts incurred for the purchase-money thereof, for the erection of permanent improvements thereon, or for taxes due thereon. (Acts of 1881, ch. 19; art. 6, sec. 48, Constitution of 1872.) And such persons may likewise set apart the personal estate of such husband or parent not exceeding \$200 in value, to be exempt from execution or other process.

Any resident mechanic, artisan or laborer, whether a husband or parent or not, may hold the working tools of his trade or occupation to the value of \$50, provided that in no case shall the exemption allowed to any one person exceed \$200. (Acts of 1881, ch. 19.) If any of the exempted property consists of wages, it is unlawful for any person to sue in his own name or in the name of any other person, or to assign any claim held by him against a resident of this state for the purpose of having payment of the same or any part thereof enforced out of such exempted wages in attachment or garnishment in any other state of the Union, or to send out of this state for assignment, transfer, or in any

other manner any claim or debt against any resident thereof, for the purpose or with the intent of depriving such person of the right to have his wages exempt from distress, levy or garnishment according to the statutes of the state of West Virginia. And if any person institute such suits or permit such suits to be instituted with the intent as aforesaid, he shall be liable in an action of debt to the person from whom payment of the same or any part thereof shall have been enforced by attachment or garnishment or otherwise for the full amount with costs. The fact that the payment of the claim or debt against any person entitled to the exemption has been enforced by legal proceedings in some state other than this state in such manner as to deprive such person to any extent of the benefit of such exemption shall be *prima facie* evidence that any residence of this state who may at any time have been the owner or holder of such claim or debt has violated the law. (Acts of 1897, ch. 47.)

#### WISCONSIN.

Real estate without limit in value to the extent of one-quarter of an acre in a city or village, or of forty acres when used for agricultural purposes elsewhere, is exempt from execution as the debtor's homestead when occupied by him, or when he is only temporarily absent therefrom; also its proceeds when so held for not more than two years with the intention of buying another homestead therewith. The homestead is subject, however, to mortgage execution thereon and to mechanics' liens, but it cannot be conveyed or mortgaged without the wife's signature. It descends unless it is devised and the widow accepts other provision for her by a will, first to the widow during widowhood, then it descends as other real estate. Its exemption is not lost by devise or by descent to the widow or issue.

Chattels exempt from execution (besides certain unimportant exemptions which are of no interest to creditors) are as follows: The debtor's library, wearing apparel, beds and bedding, stoves, cooking utensils and other farm furniture to the amount of \$200; two cows; ten swine; two horses; two mules (or in lieu of one of these last, a yoke of oxen); ten sheep and their wool, either raw or manufactured, and one year's food for all this stock; one wagon; one sleigh; one plow; one drag and \$50 worth of other farming utensils or tackle or teams; one year's provisions either provided or growing or both, for the debtor and his family; tools and implements or stock in trade or partly either to the value of \$200; one sewing machine kept for family use; printing material and presses of any printer or publisher to the value of \$1,500, except that as to claims of laborers and servants for service only, \$400 shall be exempt; and inventor's interests in his own patents; three months' earnings of the debtor not to exceed \$60 in each month if he is married and has a family to support, and not exceeding \$180 in all, including any part paid to the



debtor during that time, and all insurance moneys arising from the loss of any exempted property. These exemptions, except those of clothing, household furniture and earnings, exist only in favor of actual residents of the state, or those who are removing from one place to another. They are not available to corporations, but are practically to the partners in a firm out of a firm property. The benefit of exemptions cannot be waived prior to a levy. If the debtor does not claim his exemptions his wife may do so for him.

#### WYOMING.

Every householder being the head of a family is entitled to a homestead not exceeding in value \$1,500 to be exempt from execution or attachment for any debt, contract or civil obligation while such homestead is actually occupied as such by the owner thereof or by his family. The homestead may consist of a house and lot in any town or city or a farm of not more than one hundred and sixty acres. The owner of the homestead may mortgage the same, but such mortgage shall not be binding on the wife of a married man who had been occupying the premises with him unless she shall freely and voluntarily acknowledge and sign the same, and the officer taking such acknowledgment shall fully apprise her of her rights and of the effect of signing such a mortgage.

In addition to the homestead as above mentioned, the wearing apparel of every person is exempt from judicial or ministerial process; likewise the following property when owned by any person being the head of a family and residing with the same: The family bible, pictures and school books; a lot in a cemetery or burial ground; furniture, bedding, provisions and such other articles as the debtor may select to a total value of \$500, which shall be assessed by the appraisement of three disinterested householders. Such exemption, however, does not apply to any person who is about to abscond from the state. The tools, team and implements or stock in trade of a mechanic, miner, or other person, and used and kept for the purpose of carrying on his trade or business, is exempt to a value of not exceeding \$300. The library, instruments or implements of any professional man not to exceed in value \$300. The person claiming exemption must in all cases be a *bona fide* resident of the state of Wyoming. The earnings of the debtor for his personal services not exceeding \$100 are exempt from levy whenever it may be made to appear that such earnings are necessary for the use of his family supported in whole or in part by his labor.



## **TITLE VI.**

### **RULES, FORMS AND ORDERS PROMULGATED BY THE SUPREME COURT OF THE UNITED STATES, NO- VEMBER 28, 1898.**

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In pursuance of the powers conferred by the Constitution and laws upon the Supreme Court of the United States, and particularly by the act of Congress approved July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States," it is ordered, on this 28th day of November, 1898, that the following rules be adopted and established as general orders in bankruptcy, to take effect on the first Monday, being the second day, of January, 1899. And it is further ordered that all proceedings in bankruptcy had before that day, in accordance with the act last aforesaid, and being in substantial conformity either with the provisions of these general orders, or else with the general orders established by this court under the bankrupt act of 1867 and with any general rules or special orders of the courts in bankruptcy, stand good, subject, however, to such further regulation by rule or order of those courts as may be necessary or proper to carry into force and effect the bankrupt act of 1898 and the general orders of this court.

#### **I.**

##### **DOCKET.**

The clerk shall keep a docket, in which the cases shall be entered and numbered in the order in which they are commenced. It shall contain a memorandum of the filing of the petition and of the action of the court thereon, of the reference of the case to the referee, and of the transmission by him to the clerk of his certified record of the proceedings, with the dates thereof, and a memorandum of all proceedings in the

case except those duly entered on the referee's certified record aforesaid. The docket shall be arranged in a manner convenient for reference, and shall at all times be open to public inspection.

## II.

### FILING OF PAPERS.

The clerk or the referee shall indorse on each paper filed with him the day and hour of filing, and a brief statement of its character.

## III.

### PROCESS.

All process, summons and subpoenas shall issue out of the court, under the seal thereof, and be tested by the clerk; and blanks, with the signature of the clerk and seal of the court, may, upon application, be furnished to the referees.

## IV.

### CONDUCT OF PROCEEDINGS.

Proceedings in bankruptcy may be conducted by the bankrupt in person in his own behalf, or by a petitioning or opposing creditor; but a creditor will only be allowed to manage before the court his individual interest. Every party may appear and conduct the proceedings by attorney, who shall be an attorney or counselor authorized to practice in the circuit or district court. The name of the attorney or counselor, with his place of business, shall be entered upon the docket, with the date of the entry. All papers or proceedings offered by an attorney to be filed shall be indorsed as above required, and orders granted on motion shall contain the name of the party or attorney making the motion. Notices and orders which are not, by the act or by these general orders, required to be served on the party personally may be served upon his attorney.

## V.

### FRAME OF PETITIONS.

All petitions and schedules filed therewith shall be printed or written out plainly, without abbreviation or interlineation, except where such abbreviation and interlineation may be for the purpose of reference.

## VI.

### PETITIONS IN DIFFERENT DISTRICTS.

In case two or more petitions shall be filed against the same individual in different districts, the first hearing shall be had in the district in which the debtor has his domicile, and the petition may be amended by

inserting an allegation of an act of bankruptcy committed at an earlier date than that first alleged, if such earlier act is charged in either of the other petitions; and in case of two or more petitions against the same partnership in different courts, each having jurisdiction over the case, the petition first filed shall be first heard, and may be amended by the insertion of an allegation of an earlier act of bankruptcy than that first alleged, if such earlier act is charged in either of the other petitions; and, in either case, the proceedings upon the other petitions may be stayed until an adjudication is made upon the petition first heard; and the court which makes the first adjudication of bankruptcy shall retain jurisdiction over all proceedings therein until the same shall be closed. In case two or more petitions shall be filed in different districts by different members of the same partnership for an adjudication of the bankruptcy of said partnership, the court in which the petition is first filed, having jurisdiction, shall take and retain jurisdiction over all proceedings in such bankruptcy until the same shall be closed; and if such petitions shall be filed in the same district, action shall be first had upon the one first filed. But the court so retaining jurisdiction shall, if satisfied that it is for the greatest convenience of parties in interest that another of said courts should proceed with the cases, order them to be transferred to that court.

## VII.

### PRIORITY OF PETITIONS.

Whenever two or more petitions shall be filed by creditors against a common debtor, alleging separate acts of bankruptcy committed by said debtor on different days within four months prior to the filing of said petitions, and the debtor shall appear and show cause against an adjudication of bankruptcy against him on the petitions, that petition shall be first heard and tried which alleges the commission of the earliest act of bankruptcy; and in case the several acts of bankruptcy are alleged in the different petitions to have been committed on the same day, the court before which the same are pending may order them to be consolidated, and proceed to a hearing as upon one petition; and if an adjudication of bankruptcy be made upon either petition, or for the commission of a single act of bankruptcy, it shall not be necessary to proceed to a hearing upon the remaining petitions, unless proceedings be taken by the debtor for the purpose of causing such adjudication to be annulled or vacated.

## VIII.

### PROCEEDINGS IN PARTNERSHIP CASES.

Any member of a partnership, who refuses to join in a petition to have the partnership declared bankrupt, shall be entitled to resist the prayer of the petition in the same manner as if the petition had been

filed by a creditor of the partnership, and notice of the filing of the petition shall be given to him in the same manner as provided by law and by these rules in the case of a debtor petitioned against; and he shall have the right to appear at the time fixed by the court for the hearing of the petition, and to make proof, if he can, that the partnership is not insolvent or has not committed an act of bankruptcy, and to make all defenses which any debtor proceeded against is entitled to take by the provisions of the act; and in case an adjudication of bankruptcy is made upon the petition, such partner shall be required to file a schedule of his debts and an inventory of his property in the same manner as is required by the act in cases of debtors against whom adjudication of bankruptcy shall be made.

### IX.

#### SCHEDULE IN INVOLUNTARY BANKRUPTCY.

In all cases of involuntary bankruptcy in which the bankrupt is absent or cannot be found, it shall be the duty of the petitioning creditor to file, within five days after the date of the adjudication, a schedule giving the names and places of residence of all the creditors of the bankrupt, according to the best information of the petitioning creditor. If the debtor is found, and is served with notice to furnish a schedule of his creditors and fails to do so, the petitioning creditor may apply for an attachment against the debtor, or may himself furnish such schedule as aforesaid.

### X.

#### INDEMNITY FOR EXPENSES.

Before incurring any expense in publishing or mailing notices, or in travelling, or in procuring the attendance of witnesses, or in perpetuating testimony, the clerk, marshal or referee may require, from the bankrupt or other person in whose behalf the duty is to be performed, indemnity for such expense. Money advanced for this purpose by the bankrupt or other person shall be repaid him out of the estate as part of the cost of administering the same.

### XI.

#### AMENDMENTS.

The court may allow amendments to the petition and schedules on application of the petitioner. Amendments shall be printed or written, signed and verified, like original petitions and schedules. If amendments are made to separate schedules, the same must be made separately, with proper references. In the application for leave to amend, the petitioner shall state the cause of the error in the paper originally filed.

**XII.**

**DUTIES OF REFEREE.**

1. The order referring a case to a referee shall name a day upon which the bankrupt shall attend before the referee; and from that day the bankrupt shall be subject to the orders of the court in all matters relating to his bankruptcy, and may receive from the referee a protection against arrest, to continue until the final adjudication on his application for a discharge, unless suspended or vacated by order of the court. A copy of the order shall forthwith be sent by mail to the referee, or be delivered to him personally by the clerk or other officer of the court. And thereafter all the proceedings, except such as are required by the act or by these general orders to be had before the judge, shall be had before the referee.

2. The time when and the place where the referees shall act upon the matters arising under the several cases referred to them shall be fixed by special order of the judge, or by the referee; and at such times and places the referees may perform the duties which they are empowered by the act to perform.

3. Applications for a discharge, or for the approval of a composition, or for an injunction to stay proceedings of a court or officer of the United States or of a State, shall be heard and decided by the judge. But he may refer such an application, or any specified issue arising thereon, to the referee to ascertain and report the facts.

**XIII.**

**APPOINTMENT AND REMOVAL OF TRUSTEE.**

The appointment of a trustee by the creditors shall be subject to be approved or disapproved by the referee or by the judge; and he shall be removable by the judge only.

**XIV.**

**NO OFFICIAL OR GENERAL TRUSTEE.**

No official trustee shall be appointed by the court, nor any general trustee to act in classes of cases.

**XV.**

**TRUSTEE NOT APPOINTED IN CERTAIN CASES.**

If the schedule of a voluntary bankrupt discloses no assets, and if no creditor appears at the first meeting, the court may, by order setting out the facts, direct that no trustee be appointed; but at any time thereafter a trustee may be appointed, if the court shall deem it desirable. If no trustee is appointed as aforesaid, the court may order that no meeting of the creditors other than the first meeting shall be called.

## XVI.

## NOTICE TO TRUSTEE OF HIS APPOINTMENT.

It shall be the duty of the referee, immediately upon the appointment and approval of the trustee, to notify him in person or by mail of his appointment; and the notice shall require the trustee forthwith to notify the referee of his acceptance or rejection of the trust, and shall contain a statement of the penal sum of the trustee's bond.

## XVII.

## DUTIES OF TRUSTEE.

The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession. The trustee shall make report to the court, within twenty days after receiving the notice of his appointment, of the articles set off to the bankrupt by him, according to the provisions of the forty-seventh section of the act, with the estimated value of each article, and any creditor may take exceptions to the determination of the trustee within twenty days after the filing of the report. The referee may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the act, or by any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the referee to make an order requiring the trustee to show cause before the judge, at a time specified in the order, why he should not be removed from office. The referee shall cause a copy of the order to be served upon the trustee at least seven days before the time fixed for the hearing, and proof of the service thereof to be delivered to the clerk. All accounts of trustees shall be referred as of course to the referee for audit, unless otherwise specially ordered by the court.

## XVIII.

## SALE OF PROPERTY.

1. All sales shall be by public auction unless otherwise ordered by the court.

2. Upon application to the court, and for good cause shown, the trustee may be authorized to sell any specified portion of the bankrupt's estate at private sale; in which case he shall keep an accurate account of each article sold, and the price received therefor, and to whom sold; which account he shall file at once with the referee.

3. Upon petition by a bankrupt, creditor, receiver or trustee, setting forth that a part or the whole of the bankrupt's estate is perishable, the nature and location of such perishable estate, and that there will be loss



if the same is not sold immediately, the court, if satisfied of the facts stated and that the sale is required in the interest of the estate, may order the same to be sold, with or without notice to the creditors, and the proceeds to be deposited in court.

## XIX.

### ACCOUNTS OF MARSHAL.

The marshal shall make return, under oath, of his actual and necessary expenses in the service of every warrant addressed to him, and for custody of property, and other services, and other actual and necessary expenses paid by him, with vouchers therefor whenever practicable, and also with a statement that the amounts charged by him are just and reasonable.

## XX.

### PAPERS FILED AFTER REFERENCE.

Proofs of claims and other papers filed subsequently to the reference, except such as call for action by the judge, may be filed either with the referee or with the clerk.

## XXI.

### PROOF OF DEBTS.

1. Depositions to prove claims against a bankrupt's estate shall be correctly entitled in the court and in the cause. When made to prove a debt due to a partnership, it must appear on oath that the deponent is a member of the partnership; when made by an agent, the reason the deposition is not made by the claimant in person must be stated; and when made to prove a debt due to a corporation, the deposition shall be made by the treasurer, or, if the corporation has no treasurer, by the officer whose duties most nearly correspond to those of treasurer. Depositions to prove debts existing in open account shall state when the debt became or will become due; and if it consists of items maturing at different dates the average due date shall be stated, in default of which it shall not be necessary to compute interest upon it. All such depositions shall contain an averment that no note has been received for such account, nor any judgment rendered thereon. Proofs of debt received by any trustee shall be delivered to the referee to whom the cause is referred.

2. Any creditor may file with the referee a request that all notices to which he may be entitled shall be addressed to him at any place, to be designated by the post-office box or street number, as he may appoint; and thereafter, and until some other designation shall be made by such creditor, all notices shall be so addressed; and in other cases notices shall be addressed as specified in the proof of debt.

3. Claims which have been assigned before proof shall be supported by a deposition of the owner at the time of the commencement of proceedings, setting forth the true consideration of the debt and that it is entirely unsecured, or if secured, the security, as is required in proving secured claims. Upon the filing of satisfactory proof of the assignment of a claim proved and entered on the referee's docket, the referee shall immediately give notice by mail to the original claimant of the filing of such proof of assignment; and, if no objection be entered within ten days, or within further time allowed by the referee, he shall make an order subrogating the assignee to the original claimant. If objection be made, he shall proceed to hear and determine the matter.

4. The claims of persons contingently liable for the bankrupt may be proved in the name of the creditor when known by the party contingently liable. When the name of the creditor is unknown, such claim may be proved in the name of the party contingently liable; but no dividend shall be paid upon such claim, except upon satisfactory proof that it will diminish *pro tanto* the original debt.

5. The execution of any letter of attorney to represent a creditor, or of an assignment of claim after proof, may be proved or acknowledged before a referee, or a United States commissioner, or a notary public. When executed on behalf of a partnership or of a corporation, the person executing the instrument shall make oath that he is a member of the partnership, or a duly authorized officer of the corporation on whose behalf he acts. When the person executing is not personally known to the officer taking the proof or acknowledgment, his identity shall be established by satisfactory proof.

6. When the trustee or any creditor shall desire the re-examination of any claim filed against the bankrupt's estate, he may apply by petition to the referee to whom the case is referred for an order for such re-examination, and thereupon the referee shall make an order fixing a time for hearing the petition, of which due notice shall be given by mail addressed to the creditor. At the time appointed the referee shall take the examination of the creditor, and of any witnesses that may be called by either party, and if it shall appear from such examination that the claim ought to be expunged or diminished, the referee may order accordingly.

## XXII.

### TAKING OF TESTIMONY.

The examination of witnesses before the referee may be conducted by the party in person or by his counsel or attorney, and the witnesses shall be subject to examination and cross-examination, which shall be had in conformity with the mode now adopted in courts of law. A deposition taken upon an examination before a referee shall be taken down in writing by him, or under his direction, in the form of narrative, unless

he determines that the examination shall be by question and answer. When completed it shall be read over to the witness and signed by him in the presence of the referee. The referee shall note upon the deposition any question objected to, with his decision thereon; and the court shall have power to deal with the costs of incompetent, immaterial, or irrelevant depositions, or parts of them, as may be just.

### XXIII.

#### ORDERS OF REFEREE.

In all orders made by a referee, it shall be recited, according as the fact may be, that notice was given and the manner thereof; or that the order was made by consent; or that no adverse interest was represented at the hearing; or that the order was made after hearing adverse interests.

### XXIV.

#### TRANSMISSION OF PROVED CLAIMS TO CLERK.

The referee shall forthwith transmit to the clerk a list of the claims proved against an estate, with the names and addresses of the proving creditors.

### XXV.

#### SPECIAL MEETING OF CREDITORS.

Whenever, by reason of a vacancy in the office of trustee, or for any other cause, it becomes necessary to call a special meeting of the creditors in order to carry out the purposes of the act, the court may call such a meeting, specifying in the notice the purpose for which it is called.

### XXVI.

#### ACCOUNTS OF REFEREE.

Every referee shall keep an accurate account of his traveling and incidental expenses, and of those of any clerk or other officer attending him in the performance of his duties in any case which may be referred to him; and shall make return of the same under oath to the judge, with proper vouchers when vouchers can be procured, on the first Tuesday in each month.

### XXVII.

#### REVIEW BY JUDGE.

When a bankrupt, creditor, trustee, or other person shall desire a review by the judge of any order made by the referee, he shall file with the referee his petition therefor, setting out the error complained of; and the referee shall forthwith certify to the judge the question presented, a summary of the evidence relating thereto, and the finding and order of the referee thereon.

## XXVIII.

## REDEMPTION OF PROPERTY AND COMPOUNDING OF CLAIMS.

Whenever it may be deemed for the benefit of the estate of a bankrupt to redeem and discharge any mortgage or other pledge, or deposit or lien, upon any property, real or personal, or to relieve said property from any conditional contract, and to tender performance of the conditions thereof, or to compound and settle any debts or other claims due or belonging to the estate of the bankrupt, the trustee, or the bankrupt, or any creditor who has proved his debt, may file his petition therefor; and thereupon the court shall appoint a suitable time and place for the hearing thereof, notice of which shall be given as the court shall direct, so that all creditors and other persons interested may appear and show cause, if any they have, why an order should not be passed by the court upon the petition authorizing such act on the part of the trustee.

## XXIX.

## PAYMENT OF MONEYS DEPOSITED.

No moneys deposited as required by the act shall be drawn from the depository unless by check or warrant, signed by the clerk of the court, or by a trustee, and countersigned by the judge of the court, or by a referee designated for that purpose, or by the clerk or his assistant under an order made by the judge, stating the date, the sum, and the account for which it is drawn; and an entry of the substance of such check or warrant, with the date thereof, the sum drawn for, and the account for which it is drawn, shall be forthwith made in a book kept for that purpose by the trustee or his clerk; and all checks and drafts shall be entered in the order of time in which they are drawn, and shall be numbered in the case of each estate. A copy of this general order shall be furnished to the depository, and also the name of any referee or clerk authorized to countersign said checks.

## XXX.

## IMPRISONED DEBTOR.

If, at the time of preferring his petition, the debtor shall be imprisoned, the court, upon application, may order him to be produced upon *habeas corpus*, by the jailor or any officer in whose custody he may be, before the referee, for the purpose of testifying in any matter relating to his bankruptcy; and, if committed after the filing of his petition upon process in any civil action founded upon a claim provable in bankruptcy, the court may, upon like application, discharge him from such imprisonment. If the petitioner, during the pendency of the proceedings in bankruptcy, be arrested or imprisoned upon process in any civil action, the district court, upon his application, may issue a writ of *habeas corpus*

to bring him before the court to ascertain whether such process has been issued for the collection of any claim provable in bankruptcy, and if so provable he shall be discharged; if not, he shall be remanded to the custody in which he may lawfully be. Before granting the order for discharge the court shall cause notice to be served upon the creditor or his attorney, so as to give him an opportunity of appearing and being heard before the granting of the order.

### XXXI.

#### PETITION FOR DISCHARGE.

The petition of a bankrupt for a discharge shall state concisely, in accordance with the provisions of the act and the orders of the court, the proceedings in the case and the acts of the bankrupt.

### XXXII.

#### OPPOSITION TO DISCHARGE OR COMPOSITION.

A creditor opposing the application of a bankrupt for his discharge, or for the confirmation of a composition, shall enter his appearance in opposition thereto on the day when the creditors are required to show cause, and shall file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge.

### XXXIII.

#### ARBITRATION.

Whenever a trustee shall make application to the court for authority to submit a controversy arising in the settlement of a demand against a bankrupt's estate, or for a debt due to it, to the determination of arbitrators, or for authority to compound and settle such controversy by agreement with the other party, the application shall clearly and distinctly set forth the subject-matter of the controversy, and the reasons why the trustee thinks it proper and most for the interest of the estate that the controversy should be settled by arbitration or otherwise.

### XXXIV.

#### COSTS IN CONTESTED ADJUDICATIONS.

In cases of involuntary bankruptcy, when the debtor resists an adjudication, and the court, after hearing, adjudges the debtor a bankrupt, the petitioning creditor shall recover, and be paid out of the estate, the same costs that are allowed to a party recovering in a suit in equity; and if the petition is dismissed, the debtor shall recover like costs against the petitioner.

## XXXV.

## COMPENSATION OF CLERKS, REFEREES AND TRUSTEES.

1. The fees allowed by the act to clerks shall be in full compensation for all services performed by them in regard to filing petitions or other papers required by the act to be filed with them, or in certifying or delivering papers or copies of records to referees or other officers, or in receiving or paying out money; but shall not include copies furnished to other persons, or expenses necessarily incurred in publishing or mailing notices or other papers.

2. The compensation of referees, prescribed by the act, shall be in full compensation for all services performed by them under the act, or under these general orders; but shall not include expenses necessarily incurred by them in publishing or mailing notices, in traveling, or in perpetuating testimony, or other expenses necessarily incurred in the performance of their duties under the act and allowed by special order of the judge.

3. The compensation allowed to trustees by the act shall be in full compensation for the services performed by them; but shall not include expenses necessarily incurred in the performance of their duties and allowed upon the settlement of their accounts.

4. In any case in which the fees of the clerk, referee and trustee are not required by the act to be paid by a debtor before filing his petition to be adjudged a bankrupt, the judge, at any time during the pendency of the proceedings in bankruptcy, may order those fees to be paid out of the estate; or may, after notice to the bankrupt, and satisfactory proof that he then has or can obtain the money with which to pay those fees, order him to pay them within a time specified, and, if he fails to do so, may order his petition to be dismissed.

## XXXVI.

## APPEALS.

1. Appeals from a court of bankruptcy to a circuit court of appeals, or to the supreme court of a Territory, shall be allowed by a judge of the court appealed from or of the court appealed to, and shall be regulated, except as otherwise provided in the act, by the rules governing appeals in equity in the courts of the United States.

2. Appeals under the act to the Supreme Court of the United States from a circuit court of appeals, or from the supreme court of a Territory, or from the supreme court of the District of Columbia, or from any court of bankruptcy whatever, shall be taken within thirty days after the judgment or decree, and shall be allowed by a judge of the court appealed from, or by a justice of the Supreme Court of the United States.

3. In every case in which either party is entitled by the act to take an appeal to the Supreme Court of the United States, the court from

which the appeal lies shall, at or before the time of entering its judgment or decree, make and file a finding of the facts, and its conclusions of law thereon, stated separately; and the record transmitted to the Supreme Court of the United States on such an appeal shall consist only of the pleadings, the judgment or decree, the finding of facts, and the conclusions of law.

### **XXXVII.**

#### **GENERAL PROVISIONS.**

In proceedings in equity, instituted for the purpose of carrying into effect the provisions of the act, or for enforcing the rights and remedies given by it, the rules of equity practice established by the Supreme Court of the United States shall be followed as nearly as may be. In proceedings at law, instituted for the same purpose, the practice and procedure in cases at law shall be followed as nearly as may be. But the judge may, by special order in any case, vary the time allowed for return of process, for appearance and pleading, and for taking testimony and publication, and may otherwise modify the rules for the preparation of any particular case so as to facilitate a speedy hearing.

### **XXXVIII.**

#### **FORMS.**

The several forms annexed to these general orders shall be observed and used, with such alterations as may be necessary to suit the circumstances of any particular case.

## FORMS IN BANKRUPTCY.

[N. B.—Oaths required by the act, except upon hearings in court, may be administered by referees and by officers authorized to administer oaths in proceedings before the courts of the United States, or under the laws of the State where the same are to be taken. Bankrupt Act of 1898, c. 4, § 20.]

## [FORM No. 1.]

## DEBTOR'S PETITION.

To the Honorable ———, Judge of the District Court of the United States for the ——— District of ———:

The petition of ———, of ———, in the county of ——— and district and State of ———, [state occupation], respectfully represents:

That he has had his principal place of business [or has resided, or has had his domicile] for the greater portion of six months next immediately preceding the filing of this petition at ———, within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors except such as is exempt by law, and desires to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts:

That the schedule hereto annexed, marked B, and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said acts:

Wherefore your petitioner prays that he may be adjudged by the court to be a bankrupt within the purview of said acts. ———,

———, Attorney.

UNITED STATES OF AMERICA, District of ———, ss:

I, ———, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information, and belief. ———, *Petitioner.*

Subscribed and sworn to before me this ——— day of ———, A. D. 18—,

———,  
[Official character.]



SCHEDULE A.—STATEMENT OF ALL DEBTS OF BANKRUPT.

SCHEDULE A. (1)

Statement of all creditors who are to be paid in full, or to whom priority is secured by law.

CLAIMS WHICH HAVE PRIORITY.	Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	Where and when contracted.	Nature and consideration of the debt, and whether contracted as partner or joint contractor; and if so, with whom.	Amount.	
						\$	c.
(1) Taxes and debts due and owing to the United States .....							
(2) Taxes due and owing to the State of —, or to any county, district or, municipality thereof.....							
(3) Wages due workmen, clerks, or servants, to an amount not exceeding \$300 each, earned within three months before filing the petition.....							
(4) Other debts having priority by law .....							
					Total .....		

— — —, Petitioner.

SCHEDULE A. (2)

Creditors holding securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by acts of Congress relating to bankruptcy, and whether contracted as partner or joint contractor with any other person; and if so, with whom.]

Reference to ledger or voucher.	Names of creditors.	Residences (if unknown, that fact must be stated).	Description of securities.	When and where debts were contracted.	Value of securities.	Amount of debts.
					\$	c.
				Total ..		

— — —, Petitioner.

## SCHEDULE A. (3)

*Creditors whose claims are unsecured.*

[N. B.—When the name and residence (or either) of any drawer, maker, indorser, or holder of any bill or note, etc., are unknown, the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property.]

Reference to ledger or voucher.	Names of creditors.	Residence (if unknown, that fact must be stated).	When and where contracted.	Nature and consideration of the debt, and whether by judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor with any other person; and, if so, with whom.	Amount	
					\$	c.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
				Total.....	.....	.....

— — —, *Petitioner.*

## SCHEDULE A. (4)

*Liabilities on notes or bills discounted which ought to be paid by the drawers, makers, acceptors, or indorsers.*

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers, or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to ledger or voucher.	Names of holders as far as known.	Residence (if unknown, that fact must be stated).	Place where contracted.	Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and, if so, with whom.	Amount	
					\$	c.
.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....
				Total.....	.....	.....

— — —, *Petitioner.*

SCHEDULE A. (5)

*Accommodation paper.*

[N. B.— The dates of the notes or bills, and when due, with the names and residences of the drawers, makers, and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker, acceptor, or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Same particulars as to other commercial paper.]

Reference to ledger or voucher.	Names of holders.	Residences (if unknown, that fact must be stated).	Names and residence of persons accommodated.	Place where contracted.	Whether liability was contracted as partner or joint contractor; or with any other person; and, if so, with whom.	Amount.	
						\$	c.
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	.....	.....	.....
.....	.....	.....	.....	.....	Total .....	.....	.....

— — —, *Petitioner.*

OATH TO SCHEDULE A.

UNITED STATES OF AMERICA, District of — —, ss:

On this — day of —, A. D. 18—, before me personally came — —, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the acts of Congress relating to bankruptcy.

Subscribed and sworn to before me this — day of —, A. D. 18—,

— — —,  
[Official character.]

## SCHEDULE B.—STATEMENT OF ALL PROPERTY OF BANKRUPT.

## SCHEDULE B. (1)

*Real estate.*

LOCATION AND DESCRIPTION OF ALL REAL ESTATE OWNED BY DEBTOR OR HELD BY HIM.	Incumbrances thereon, if any, and dates thereof.	Statement of particulars relating thereto.	Estimated value.	
			\$	c.
.....	.....	.....	.....	.....
.....	.....	.....	.....	.....
.....	.....	Total .....	.....	.....

— — —, *Petitioner.*

## SCHEDULE B. (2)

*Personal property.*

	\$	c.
a. Cash on hand .....	.....	.....
b. Bills of exchange, promissory notes, or securities of any description (each to be set out separately) .....	.....	.....
c. Stock in trade, in — business of — — —, at — —, of the value of — — — .....	.....	.....
d. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz. ....	.....	.....
e. Books, prints, and pictures, viz. ....	.....	.....
f. Horses, cows, sheep, and other animals (with number of each), viz. ....	.....	.....
g. Carriages and other vehicles, viz. ....	.....	.....
h. Farming stock and implements of husbandry, viz. ....	.....	.....
i. Shipping, and shares in vessels, viz. ....	.....	.....
k. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz. ....	.....	.....
l. Patents, copyrights, and trade-marks, viz. ....	.....	.....
m. Goods or personal property of any other description, with the place where each is situated, viz. ....	.....	.....
Total .....	.....	.....

— — —, *Petitioner.*

SCHEDULE B. (3)

*Choses in action.*

		Dollars.	Cents.
a. Debts due petitioner on open account .....	.....	.....	.....
b. Stocks in incorporated companies, interest in joint stock companies, and negotiable bonds.....	.....	.....	.....
c. Policies of insurance .....	.....	.....	.....
d. Unliquidated claims of every nature, with their estimated value .....	.....	.....	.....
e. Deposits of money in banking institutions and elsewhere .....	.....	.....	.....
	Total .....	.....	.....

— — —, *Petitioner.*

SCHEDULE B. (4)

*Property in reversion, remainder, or expectancy, including property held in trust for the debtor or subject to any power or right to dispose of or to charge.*

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the person to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.]

GENERAL INTEREST.	Particular description.	Supposed value of my interest.	
		\$	c.
Interest in land .....	.....	.....	.....
Personal property.....	.....	.....	.....
Property in money, stock, shares, bonds, annuities, etc.....	.....	.....	.....
	Total .....	.....	.....
Rights and powers, legacies and bequests .....		Amount realized from proceeds of property conveyed.	
<i>Property heretofore conveyed for benefit of creditors.</i>			
		\$	c.
What portion of debtor's property has been conveyed by deed of assignment, or otherwise, for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.....	.....	.....	.....
What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.....	.....	.....	.....
	Total .....	.....	.....

— — —, *Petitioner.*

## SCHEDULE B. (5)

*A particular statement of the property claimed as exempted from the operation of the acts of Congress relating to bankruptcy, giving each item of property and its valuation; and, if any portion of it is real estate, its location, description, and present use.*

		Valuation.	
		\$	c.
Military uniform, arms, and equipments. ....	.....	.....	.....
Property claimed to be exempted by State laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption .....	.....	.....	.....
	Total .....	.....	.....

— — —, *Petitioner.*

## SCHEDULE B. (6)

**BOOKS, PAPERS, DEEDS, AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE.**

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate, and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me, or for my use, benefit, or advantage; and also of all others which have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books .....	
Deeds.....	
Papers ....	

— — —, *Petitioner.*

## OATH TO SCHEDULE B.

UNITED STATES OF AMERICA, District of —, ss:

On this — day of —, A. D. 18—, before me personally came —, the person mentioned in and who subscribed to the foregoing schedule, and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the acts of Congress relating to bankruptcy.

— — —,  
[Official character.]

## SUMMARY OF DEBTS AND ASSETS

[From the statements of the bankrupt in Schedules A and B.]

Schedule A....	1 (1) Taxes and debts due United States.....			
" "....	1 (2) Taxes due States, counties, districts, and municipalities.....			
" "....	1 (3) Wages.....			
" "....	1 (4) Other debts preferred by law.....			
Schedule A....	2 Secured claims.....			
Schedule A....	3 Unsecured claims.....			
Schedule A....	4 Notes and bills which ought to be paid by other parties thereto.....			
Schedule A....	5 Accommodation paper.....			
	Schedule A, total.....			
Schedule B....	1 Real estate.....			
Schedule B....	2-a Cash on hand.....			
" "....	2-b Bills, promissory notes, and securities.....			
" "....	2-c Stock in trade.....			
" "....	2-d Household goods, etc.....			
" "....	2-e Books, prints, and pictures.....			
" "....	2-f Horses, cows, and other animals.....			
" "....	2-g Carriages and other vehicles.....			
" "....	2-h Farming stock and implements.....			
" "....	2-i Shipping and shares in vessels.....			
" "....	2-k Machinery, tools, etc.....			
" "....	2-l Patents, copyrights, and trade-marks.....			
" "....	2-m Other personal property.....			
Schedule B....	3-a Debts due on open accounts.....			
" "....	3-b Stocks, negotiable bonds, etc.....			
" "....	3-c Policies of insurance.....			
" "....	3-d Unliquidated claims.....			
" "....	3-e Deposits of money in banks and elsewhere.....			
Schedule B....	4 Property in reversion, remainder, trust, etc.....			
Schedule B....	5 Property claimed to be excepted.....			
Schedule B....	6 Books, deeds, and papers.....			
	Schedule B, total.....			

## [FORM No. 2.]

## PARTNERSHIP PETITION.

To the Honorable ———, Judge of the District Court of the United States for the ——— District of ———:

The petition of ——— respectfully represents:

That your petitioners and ——— have been partners under the firm name of ———, having their principal place of business at ———, in the county of ———, and district and State of ———, for the greater portion of the six months next immediately preceding the filing of this petition; that the said partners owe debts which they are unable to pay in full; that your petitioners are willing to surrender all their property for the benefit of their creditors, except such as is exempt by law, and desire to obtain the benefit of the acts of Congress relating to bankruptcy.

That the schedule hereto annexed, marked A, and verified by oath, contains a full and true statement of all the debts of said partners, and, as far as possible, the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said acts.

That the schedule hereto annexed, marked B, verified by ——— oath, contains an accurate inventory of all the property, real and personal, of said partners, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— further states that the schedule hereto annexed, marked C, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked D, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— further states that the schedule hereto annexed, marked E, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked F, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— further states that the schedule hereto annexed, marked G, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked H, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

And said ——— further states that the schedule hereto annexed, marked J, verified by his oath, contains a full and true statement of all his individual debts, and, as far as possible, the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said acts; and that the schedule hereto annexed, marked K, verified by his oath, contains an accurate inventory of all his individual property, real and personal, and such further statements concerning said property as are required by the provisions of said acts.

Wherefore your petitioners pray that the said firm may be adjudged by a decree of the court to be bankrupts within the purview of said acts.

———, *Attorney.*

———  
———  
———

*Petitioners.*



—, the petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information, and belief.

—,  
—,  
—,

*Petitioners.*

Subscribed and sworn to before me this — day of —, A. D. 18—

—,  
—,

[Official character.]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

[FORM No. 3.]

CREDITORS' PETITION.

To the Honorable —, Judge of the District Court of the United States for the — District of —:

The petition of —, of —, and —, of —, and —, of —, respectfully shows:

That —, of —, has for the greater portion of six months next preceding the date of filing this petition, had his principal place of business [or resided, or had his domicile] at —, in the county of —, and State and district aforesaid, and owes debts to the amount of \$1,000.

That your petitioners are creditors of said —, having provable claims amounting in the aggregate, in excess of securities held by them, to the sum of \$500. That the nature and amount of your petitioners' claims are as follows: —

And your petitioners further represent that said — is insolvent, and that within four months next preceding the date of this petition the said — committed an act of bankruptcy, in that he did heretofore, to wit, on the — day of —,

Wherefore your petitioners pray that service of this petition, with a subpoena, may be made upon —, as provided in the acts of Congress relating to bankruptcy, and that he may be adjudged by the court to be a bankrupt within the purview of said acts.

—,  
—,  
—,

—, Attorney.

*Petitioners.*

UNITED STATES OF AMERICA, District of —, ss.:

—, —, —, —, —, being three of the petitioners above named, do hereby make solemn oath that the statements contained in the foregoing petition, subscribed by them, are true.

Before me, —, this — day of —, 18—.

—,  
—,  
[Official character.]

[Schedules to be annexed corresponding with schedules under Form No. 1.]

[FORM No. 4.]

ORDER TO SHOW CAUSE UPON CREDITORS' PETITION.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—,

Upon consideration of the petition of — that — be declared a bankrupt, it is ordered that the said — do appear at this court, as a court of bankruptcy, to be holden at —, in the district aforesaid, on the — day of —, at — o'clock in the — noon, and show cause, if any there be, why the prayer of said petition should not be granted; and

It is further ordered that a copy of said petition, together with a writ of subpoena, be served on said —, by delivering the same to him personally or by leaving the same at his last usual place of abode in said district, at least five days before the day aforesaid.

Witness the Honorable —, judge of the said court, and the seal thereof, at —, in said district, on the — day of —, A. D. 18—.

[Seal of  
the court.]

—, Clerk.

[FORM No. 5.]

SUBPOENA TO ALLEGED BANKRUPT.

UNITED STATES OF AMERICA, — District of —.

To —, in said district, greeting:

For certain causes offered before the District Court of the United States of America within and for the — district of —, as a court of bankruptcy, we command and strictly enjoin you, laying all other matters aside and notwithstanding any excuse, that you personally appear before our said District Court to be holden at —, in said district, on the — day of —, A. D. 189—, to answer to a petition filed by — in our said court, praying that you may be adjudged a

bankrupt; and to do further and receive that which our said District Court shall consider in this behalf. And this you are in no wise to omit, under the pains and penalties of what may befall thereon.

Witness the Honorable —, judge of said court, and the seal thereof, at —, this — day of —, A. D. 18—.

[Seal of  
the court.]

—, Clerk.

[FORM No. 6.]

DENIAL OF BANKRUPTCY.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—,

At —, in said district, on the — day of —, A. D. 18—,

And now the said — appears, and denies that he has committed the act of bankruptcy set forth in said petition, or that he is insolvent, and avers that he should not be declared bankrupt for any cause in said petition alleged; and this he prays may be inquired of by the court [or, he demands that the same may be inquired of by a jury].

Subscribed and sworn to before me this — day of —, A. D. 18—,

[Official character.]

[FORM No. 7.]

ORDER FOR JURY TRIAL.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—,

At —, in said district, on the — day of —, 18—,

Upon the demand in writing filed by —, alleged to be a bankrupt, that the fact of the commission by him of an act of bankruptcy, and the fact of his insolvency may be inquired of by a jury, it is ordered, that said issue be submitted to a jury.

[Seal of  
the court.]

—, Clerk.

[FORM No. 8.]

SPECIAL WARRANT TO MARSHAL.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—,

To the marshal of said district or to either of his deputies, greeting:

Whereas a petition for adjudication of bankruptcy was, on the — day of —, A. D. 18—, filed against —, of the county of — and

State of —, in said district, and said petition is still pending; and whereas it satisfactorily appears that said — has committed an act of bankruptcy [or has neglected or is neglecting, or is about to so neglect his property that it has thereby deteriorated or is thereby deteriorating or is about thereby to deteriorate in value], you are therefore authorized and required to seize and take possession of all the estate, real and personal, of said —, and of all his deeds, books of account, and papers, and to hold and keep the same safely subject to the further order of the court.

Witness the Honorable —, judge of the said court, and the seal thereof, at —, in said district, on the — of —, A. D. 189—.

[Seal of  
the court.]

—, Clerk.

#### RETURN BY MARSHAL THEREON.

By virtue of the within warrant, I have taken possession of the estate of the within-named —, and of all his deeds, books of account, and papers which have come to my knowledge.

—, Marshal [or Deputy Marshal].

#### Fees and expenses.

- |   |  |
|---|--|
| 1. Service of warrant.....  |  |
| 2. Necessary travel, at the rate of six cents a mile each way.....  |  |
| 3. Actual expenses in custody of property and other services as follows.<br>[Here state the particulars.] |  |

—, Marshal [or Deputy Marshal].

District of —, A. D. 18—.

Personally appeared before me the said —, and made oath that the above expenses returned by him have been actually incurred and paid by him, and are just and reasonable.

—, Referee in Bankruptcy.

[FORM No. 9.]

#### BOND OF PETITIONING CREDITOR.

Know all men by these presents: That we, —, as principal, and —, as sureties, are held and firmly bound unto —, in the full and just sum of — dollars, to be paid to said —, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this — day of —, A. D. 189—.

The condition of this obligation is such that whereas a petition in

bankruptcy has been filed in the district court of the United States for the — district of — against the said —, and the said — has applied to that court for a warrant to the marshal of said district directing him to seize and hold the property of said —, subject to the further orders of said district court.

Now, therefore, if such a warrant shall issue for the seizure of said property, and if the said — shall indemnify the said — for such damages as he shall sustain in the event such seizure shall prove to have been wrongfully obtained, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in presence of —

—  
—

— [Seal]  
— [Seal]  
— [Seal]

Approved this — day of —, A. D. 189—

—, District Judge.

[FORM No. 10.]

BOND TO MARSHAL.

Know all men by these presents that we, —, as principal, and —, as sureties, are held and firmly bound unto —, marshal of the United States for the — district of —, in the full and just sum of — dollars, to be paid to the said —, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this — day of —, A. D. 189—

The condition of this obligation is such that whereas a petition in bankruptcy has been filed in the district court of the United States for the — district of —, against the said —, and the said court has issued a warrant to the marshal of the United States for said district, directing him to seize and hold property of the said —, subject to the further order of the court, and the said property has been seized by said marshal as directed, and the said district court upon a petition of said — has ordered the said property to be released to him.

Now, therefore, if the said property shall be released accordingly to the said —, and the said —, being adjudged a bankrupt, shall turn over said property or pay the value thereof in money to the trustee, then the above obligation to be void; otherwise to remain in full force and virtue.

Sealed and delivered in the presence of —

—  
—  
—

— [Seal]  
— [Seal]  
— [Seal]

Approved this — day of —, A. D. 189—

—, District Judge.

## [FORM No. 11.]

## ADJUDICATION THAT DEBTOR IS NOT BANKRUPT.

In the District Court of the United States for the — District of —.

In the matter of }  
—, } In Bankruptcy.

At —, in said district, on — day of —, A. D. 18—, before the Honorable —, judge of the — district of —.

This cause came on to be heard at —, in said court, upon the petition of — that — be adjudged a bankrupt within the true intent and meaning of the acts of Congress relating to bankruptcy, and [*Here state the proceedings, whether there was no opposition, or, if opposed, state what proceedings were had.*]

And thereupon, and upon consideration of the proofs in said cause [*and the arguments of counsel thereon, if any*], it was found that the facts set forth in said petition were not proved; and it is therefore adjudged that said — was not a bankrupt, and that said petition be dismissed, with costs.

Witness the Honorable —, judge of said court, and the seal thereof, at —, in said district, on the — day of —, A. D. 18—.

[*Seal of* —, Clerk.  
*the court.*]

## [FORM No. 12.]

## ADJUDICATION OF BANKRUPTCY.

In the District Court of the United States for the — District of —.

In the matter of }  
—, Bankrupt. } In Bankruptcy.

At —, in said district, on the — day of —, A. D. 18—, before the Honorable —, judge of said court in bankruptcy, the petition of — that — be adjudged a bankrupt, within the true intent and meaning of the acts of Congress relating to bankruptcy, having been heard and duly considered, the said — is hereby declared and adjudged bankrupt accordingly.

Witness the Honorable —, judge of said court, and the seal thereof, at —, in said district, on the — day of —, A. D. 18—.

[*Seal of* —, Clerk.  
*the court.*]

## [FORM No. 13.]

## APPOINTMENT, OATH, AND REPORT OF APPRAISERS.

In the District Court of the United States for the — District of —.

In the matter of }  
—, Bankrupt. } In Bankruptcy.

It is ordered that —, of —, —, of —, and —, of —, three disinterested persons, be, and they are hereby, appointed ap-

praisers to appraise the real and personal property belonging to the estate of the said bankrupt set out in the schedules now on file in this court, and report their appraisal to the court, said appraisal to be made as soon as may be, and the appraisers to be duly sworn.

Witness my hand this — day of —, A. D. 18—.

— — —  
*Referee in Bankruptcy.*

— District of —, as:

Personally appeared the within named — — and severally made oath that they will fully and fairly appraise the aforesaid real and personal property according to their best skill and judgment.

Subscribed and sworn to before me this — day of —, A. D. 189—.

— — —  
[Official character.]

We, the undersigned, having been notified that we were appointed to estimate and appraise the real and personal property aforesaid, have attended to the duties assigned us, and after a strict examination and careful inquiry, we do estimate and appraise the same as follows:

	Dollars.	Cents.
_____	_____	_____
.....	.....	.....
.....	.....	.....

In witness whereof we hereunto set our hands, at —, this — day of —, A. D. 18—.

— — —  
— — —  
— — —

[FORM No. 14.]

ORDER OF REFERENCE.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
— — —, *Bankrupt.*

Whereas — —, of —, in the county of —, and district aforesaid, on the — day of —, A. D. 18—, was duly adjudged a bankrupt upon a petition filed in this court by [or, against] him on the — day of —, A. D. 18—, according to the provisions of the acts of Congress relating to bankruptcy,

It is thereupon ordered, that said matter be referred to — —, one

of the referees in bankruptcy of this court, to take such further proceedings therein as are required by said acts; and that the said — shall attend before said referee on the — day of —, at —, and thenceforth shall submit to such orders as may be made by said referee or by this court relating to said — bankruptcy.

Witness the Honorable —, judge of the said court, and the seal thereof, at —, in said district, on the — day of —, A. D. 18—.

[Seal of  
the court.]

—, Clerk.

### [FORM No. 15.]

#### ORDER OF REFERENCE IN JUDGE'S ABSENCE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, —,

Whereas on the — day of —, A. D. 18—, a petition was filed to have —, of —, in the county of —, and district aforesaid, adjudged a bankrupt according to the provisions of the acts of Congress relating to bankruptcy; and whereas the judge of said court was absent from said district at the time of filing said petition [*or, in case of involuntary bankruptcy, on the next day after the last day on which pleadings might have been filed, and none have been filed by the bankrupt or any of his creditors*], it is thereupon ordered that the said matter be referred to —, one of the referees in bankruptcy of this court, to consider said petition and take such proceedings therein as are required by said acts; and that the said — shall attend before said referee on the — day of —, A. D. 18—, at —.

Witness my hand and the seal of the said court, at —, in said district, on the — day of —, A. D. 18—.

[Seal of  
the court.]

—, Clerk.

### [FORM No. 16.]

#### REFEREE'S OATH OF OFFICE.

I, —, do solemnly swear that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent on me as referee in bankruptcy, according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States. So help me God.

Subscribed and sworn to before me this — day of —, A. D. 18—.

—,  
District Judge.



## [FORM No. 17.]

## BOND OF REFEREE.

Know all men by these presents: That we, — of —, as principal, and — of — and — of —, as sureties, are held and firmly bound to the United States of America in the sum of — dollars, lawful money of the United States, to be paid to the said United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this — day of —, A. D. 18—.

The condition of this obligation is such that whereas the said — has been on the — day of —, A. D. 18—, appointed by the Honorable —, judge of the district court of the United States for the — district of —, a referee in bankruptcy, in and for the county of —, in said district, under the acts of Congress relating to bankruptcy.

Now, therefore, if the said — shall well and faithfully discharge and perform all the duties pertaining to the said office of referee in bankruptcy, then this obligation to be void; otherwise to remain in full force and virtue.

Signed and sealed in the presence of

—,  
—,

—, [L. S.]  
—, [L. S.]  
—, [L. S.]

Approved this — day of —, A. D. 18—,  
—, District Judge.

## [FORM No. 18.]

## NOTICE OF FIRST MEETING OF CREDITORS.

In the District Court of the United States for the — District of —,  
In Bankruptcy.

In the matter of }  
—, Bankrupt. } In Bankruptcy.

To the creditors of —, of —, in the county of —, and district aforesaid, a bankrupt:

Notice is hereby given that on the — day of —, A. D. 18—, the said — was duly adjudicated bankrupt; and that the first meeting of his creditors will be held at — in —, on the — day of —, A. D. 18—, at — o'clock in the —noon, at which time the said creditors may attend, prove their claims, appoint a trustee, examine the bankrupt, and transact such other business as may properly come before said meeting.

—, 18—,

—,  
Referee in Bankruptcy.

## [FORM No. 19.]

## LIST OF DEBTS PROVED AT FIRST MEETING.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
 — — —, *Bankrupt.*

At —, in said district, on the — day of —, A. D. 18—, before  
 — — —, referee in bankruptcy.

The following is a list of creditors who have this day proved their debts:

Names of creditors.	Residence.	Debts proved.	
		Dolla.	Cts.
.....	.....	.....	.....
.....	.....	.....	.....

— — —,  
*Referee in Bankruptcy.*

## [FORM No. 20.]

## GENERAL LETTER OF ATTORNEY IN FACT WHEN CREDITOR IS NOT REPRESENTED BY ATTORNEY AT LAW.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
 — — —, *Bankrupt.*

To — — —,  
 — — —:

I, — — —, of —, in the county of — and State of —, do hereby authorize you, or any one of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a court of bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said court in said matter, or at such other place and time as may be appointed by the court for holding such meeting or meetings, or at which such meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion, for me and in my name to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of the said bankrupt, and for me to assent to such appointment of trustee; and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction

of his debts, and to receive payment of dividends and of money due me under any composition, and for any other purpose in my interest whatsoever, with full power of substitution.

In witness whereof I have hereunto signed my name and affixed my seal the — day of —, A. D. 189—, [L. S.]

Signed, sealed, and delivered in presence of —

Acknowledged before me this — day of —, A. D. 189—,

[Official character.]

### [FORM No. 21.]

#### SPECIAL LETTER OF ATTORNEY IN FACT.

In the matter of }  
— — —, *Bankrupt.* } In Bankruptcy.

To — — —,  
— — —;

I hereby authorize you, or any one of you, to attend the meeting of creditors in this matter, advertised or directed to be holden at —, on the — day of —, before —, or any adjournment thereof, and then and there — for — and in — name to vote for or against any proposal or resolution that may be lawfully made or passed at such meeting or adjourned meeting, and in the choice of trustee or trustees of the estate of the said bankrupt. — — —, [L. S.]

In witness whereof I have hereunto signed my name and affixed my seal the — day of —, A. D. 189—,

Signed, sealed, and delivered in presence of —

Acknowledged before me this — day of —, A. D. 189—,

[Official character.]

### [FORM No. 22.]

#### APPOINTMENT OF TRUSTEE BY CREDITORS.

In the District Court of the United States for the — District of —,

In the matter of }  
— — —, *Bankrupt.* } In Bankruptcy.

At —, in said district, on the — day of —, A. D. 18—, before — — —, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors in the above bankruptcy, and of which due notice has been given in the [here insert the names of the newspapers in which notice was published], we, whose names are hereunder written, being the ma-

jority in number and in amount of claims of the creditors of the said bankrupt, whose claims have been allowed, and who are present at this meeting, do hereby appoint —, of —, in the county of — and State of —, to be the trustee of the said bankrupt's estate and effects.

Signatures of creditors.	Residences of the same.	Amount of debt.	
		Dolla.	Cts.
.....	.....	.....	.....
.....	.....	.....	.....

Ordered that the above appointment of trustee be, and the same is hereby, approved.

—, *Referee in Bankruptcy.*

[FORM No. 23.]

APPOINTMENT OF TRUSTEE BY REFEREE.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district, on the — day of —, A. D. 18—, before —, referee in bankruptcy.

This being the day appointed by the court for the first meeting of creditors under the said bankruptcy, and of which due notice has been given in the [*here insert the names of the newspapers in which notice was published*], I, the undersigned referee of the said court in bankruptcy, sat at the time and place above mentioned, pursuant to such notice, to take the proof of debts and for the choice of trustee under the said bankruptcy; and I do hereby certify that the creditors whose claims had been allowed and were present, or duly represented, failed to make choice of a trustee of said bankrupt's estate, and therefore I do hereby appoint —, of —, in the county of — and State of —, as trustee of the same.

—, *Referee in Bankruptcy.*

[FORM No. 24.]

NOTICE TO TRUSTEE OF HIS APPOINTMENT.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

To —, of —, in the county of —, and district aforesaid:

I hereby notify you that you were duly appointed trustee [*or one of the trustees*] of the estate of the above-named bankrupt at the first meeting of the creditors, on the — day of —, A. D. 18—, and I have ap-

proved said appointment. The penal sum of your bond as such trustee has been fixed at — dollars. You are required to notify me forthwith of your acceptance or rejection of the trust.

Dated at — the — day of —, A. D. 18—.

— — —  
*Referee in Bankruptcy.*

[FORM No. 25.]

BOND OF TRUSTEE.

Know all men by these presents: That we, — — —, of —, as principal, and — — —, of —, and — — —, of —, as sureties, are held and firmly bound unto the United States of America in the sum of — dollars, in lawful money of the United States, to be paid to the said United States, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Signed and sealed this — day of —, A. D. 189—.

The condition of this obligation is such, that whereas the above named — — — was, on the — day of —, A. D. 189—, appointed trustee in the case pending in bankruptcy in said court, wherein — — — is the bankrupt, and he, the said — — —, has accepted said trust with all the duties and obligations pertaining thereunto:

Now, therefore, if the said — — —, trustee as aforesaid, shall obey such orders as said court may make in relation to said trust, and shall faithfully and truly account for all the moneys, assets, and effects of the estate of said bankrupt which shall come into his hands and possession, and shall in all respects faithfully perform all his official duties as said trustee, then this obligation to be void; otherwise, to remain in full force and virtue.

Signed and sealed in presence of

— — —  
— — —

— — —, [Seal]  
— — —, [Seal]  
— — —, [Seal]

[FORM No. 26.]

ORDER APPROVING TRUSTEE'S BOND.

At a court of bankruptcy, held in and for the — District of —, at —, —, this — day of —, 189—.

Before — — —, referee in bankruptcy, in the District Court of the United States for the — District of —,

In the matter of }  
— — —, Bankrupt. } In Bankruptcy.

It appearing to the Court that — — —, of —, and in said district, has been duly appointed trustee of the estate of the above-named bankrupt,

and has given a bond with sureties for the faithful performance of his official duties, in the amount fixed by the creditors [or by order of the court], to wit, in the sum of — dollars, it is ordered that the said bond be, and the same is hereby, approved.

— — —,  
*Referee in Bankruptcy.*

[FORM No. 27.]

ORDER THAT NO TRUSTEE BE APPOINTED.

In the District Court of the United States for the — District of —,

In the matter of }  
— — —, *Bankrupt.* } In Bankruptcy.

It appearing that the schedule of the bankrupt discloses no assets, and that no creditor has appeared at the first meeting, and that the appointment of a trustee of the bankrupt's estate is not now desirable, it is hereby ordered that, until further order of the court, no trustee be appointed and no other meeting of the creditors be called.

— — —,  
*Referee in Bankruptcy.*

[FORM No. 28.]

ORDER FOR EXAMINATION OF BANKRUPT.

In the matter of }  
— — —, *Bankrupt.* } In Bankruptcy.

At —, on the — day of —, A. D. 18—.

Upon the application of — — —, trustee of said bankrupt [or creditor of said bankrupt], it is ordered that said bankrupt attend before — — —, one of the referees in bankruptcy of this court, at —, on the — day of —, at — o'clock in the — noon, to submit to examination under the acts of Congress relating to bankruptcy, and that a copy of this order be delivered to him, the said bankrupt, forthwith.

— — —,  
*Referee in Bankruptcy.*

[FORM No. 29.]

EXAMINATION OF BANKRUPT OR WITNESS.

In the District Court of the United States for the — District of —,

In the matter of }  
— — —, *Bankrupt.* } In Bankruptcy.

At —, in said district, on the — day of —, A. D. 18—, before — — —, one of the referees in bankruptcy of said court.

—, of —, in the county of —, and State of —, being duly sworn and examined at the time and place above mentioned, upon his oath says: [*Here insert substance of examination of party.*]

*Referee in Bankruptcy.*

[FORM No. 30.]

SUMMONS TO WITNESS.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

To —:

Whereas —, of —, in the county of —, and State of —, has been duly adjudged bankrupt, and the proceeding in bankruptcy is pending in the District Court of the United States for the — District of —,

These are to require you, to whom this summons is directed, personally to be and appear before —, one of the referees in bankruptcy of the said court, at —, on the — day —, at — o'clock in the —noon, then and there to be examined in relation to said bankruptcy.

Witness the Honorable —, judge of said court, and the seal thereof, at —, this — day of —, A. D. 189—. —, *Clerk.*

RETURN OF SUMMONS TO WITNESS.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

On this — day of —, A. D. 18—, before me came —, of —, in the county of — and State of —, and makes oath, and says that he did, on —, the — day of —, A. D. 189—, personally serve —, of —, in the county of — and State of —, with a true copy of the summons hereto annexed, by delivering the same to him; and he further makes oath, and says that he is not interested in the proceeding in bankruptcy named in said summons.

Subscribed and sworn to before me this — day of —, A. D. 18—.

[FORM No. 31.]

PROOF OF UNSECURED DEBT.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district of —, on the — day of —, A. D. 189—, came —, of —, in the county of —, in said district of —, and made oath, and says that —, the person by [or against] whom a

petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to said deponent in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; that there are no set-offs or counter-claims to the same [except —]; and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever. —, *Creditor.*

Subscribed and sworn to before me this — day of —, A. D. 18—,

—,  
[Official character.]

[FORM No. 32.]

PROOF OF SECURED DEBT.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district of —, on the day of —, A. D. 189—, came —, of —, in the county of —, in said district of —, and made oath, and says that —, the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to said deponent, in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; that there are no set-offs or counter-claims to the same [except —]; and that the only securities held by this deponent for said debt are the following: —, —, *Creditor.*

Subscribed and sworn to before me this — day of —, A. D. 18—,

—,  
[Official character.]

[FORM No. 33.]

PROOF OF DEBT DUE CORPORATION.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district of —, on the — day of —, A. D. 189—, came —, of —, in the county of — and State of —, and made oath and says that he is — of the —, a corporation incorporated by and under the laws of the State of —, and carrying on business at —, in the county of — and State of —, and that he is duly authorized to make this proof, and says that the said —, the person by [or against] whom a petition for adjudication of bankruptcy has



been filed, was at and before the filing of the said petition, and still is, justly and truly indebted to said corporation in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; that there are no set-offs or counter-claims to the same [except —]; and that said corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever.

—, *of said Corporation.*

Subscribed and sworn to before me this — day of —, A. D. 18—.

[Official character.]

[FORM No. 34.]

PROOF OF DEBT BY PARTNERSHIP.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district of —, on the — day of —, A. D. 189—, came —, of —, in the county of —, in said district of —, and made oath and says that he is one of the firm of —, consisting of himself and —, of —, in the county of — and State of —; that the said —, the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to this deponent's said firm in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; that there are no set-offs or counter-claims to the same [except —]; and this deponent has not, nor has his said firm, nor has any person by their order, or to this deponent's knowledge or belief, for their use, had or received any manner of security for said debt whatever.

—, *Creditor.*

Subscribed and sworn to before me this — day of —, A. D. 18—.

[Official character.]

[FORM No. 35.]

PROOF OF DEBT BY AGENT OR ATTORNEY.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district of —, on the — day of —, A. D. 189—, came —, of —, in the county of —, and State of —, attorney [or

authorized agent] of —, in the county of —, and State of —, and made oath and says that —, the person by [or against] whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said —, in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that this deposition can not be made by the claimant in person because —; and that he is duly authorized by his principal to make this affidavit, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

Subscribed and sworn to before me this — day of —, A. D. 18—

—,  
[Official character.]

### [FORM No. 36.]

#### PROOF OF SECURED DEBT BY AGENT.

In the District Court of the United States for the — District of —

In the matter of } In Bankruptcy.  
—, Bankrupt.

At —, in said district of —, on the — day of —, A. D. 18—, came —, of —, in the county of —, and State of —, attorney [or, authorized agent] of —, in the county of —, and State of —, and made oath, and says that —, the person by [or, against] whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of said petition, and still is, justly and truly indebted to the said — in the sum of — dollars; that the consideration of said debt is as follows: —; that no part of said debt has been paid [except —]; that there are no set-offs or counter-claims to the same [except —]; and that the only securities held by said — for said debt are the following: —; and this deponent further says that this deposition cannot be made by the claimant in person because —; and that he is duly authorized by his principal to make this deposition, and that it is within his knowledge that the aforesaid debt was incurred as and for the consideration above stated.

Subscribed and sworn to before me this — day of —, A. D. 18—

—,  
[Official character.]

[FORM No. 37.]

AFFIDAVIT OF LOST BILL, OR NOTE.

In the District Court of the United States for the — District of —,

In the matter of }  
— —, Bankrupt. } In Bankruptcy.

On this — day of —, A. D. 18—, at —, came —, of —, in the county of —, and State of —, and makes oath and says that the bill of exchange [or note], the particulars whereof are underwritten, has been lost under the following circumstances, to wit, —; and that he, this deponent, has not been able to find the same; and this deponent further says that he has not, nor has the said —, or any person or persons to their use, to this deponent's knowledge or belief, negotiated the said bill [or note], nor in any manner parted with or assigned the legal or beneficial interest therein, or any part thereof; and that he, this deponent, is the person now legally and beneficially interested in the same.

*Bill or note above referred to.*

Date.	Drawer or maker.	Acceptor.	Sum.
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

Subscribed and sworn to before me this — day of —, A. D. 18—,

[Official character.]

[FORM No. 38.]

ORDER REDUCING CLAIM.

In the District Court of the United States for the — District of —,

In the matter of }  
— —, Bankrupt. } In Bankruptcy.

At —, in said district, on the — day of —, A. D. 18—,

Upon the evidence submitted to this court upon the claim of — against said estate [and, *if the fact be so*, upon hearing counsel thereon], it is ordered, that the amount of said claim be reduced from the sum of —, as set forth in the affidavit in proof of claim filed by said creditor in said case, to the sum of —, and that the latter-named sum be entered upon the books of the trustee as the true sum upon which a dividend shall be computed [*if with interest*, with interest thereon from the — day of —, A. D. 18—].

*Referee in Bankruptcy.*

## [FORM No. 39.]

## ORDER EXPUNGING CLAIM.

In the District Court of the United States for the — District of —

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district, on the — day of —, A. D. 18—.

Upon the evidence submitted to the court upon the claim of — against said estate [and *if the fact be so*, upon hearing counsel thereon], it is ordered, that said claim be disallowed and expunged from the list of claims upon the trustee's record in said case.

—, *Referee in Bankruptcy.*

## [FORM No. 40.]

## LIST OF CLAIMS AND DIVIDENDS TO BE RECORDED BY REFEREE AND BY HIM DELIVERED TO TRUSTEE.

In the District Court of the United States for the — District of —

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district, on the — day of —, A. D. 18—.

*A list of debts proved and claimed under the bankruptcy of —, with — dividend at the rate of — per cent. this day declared thereon by —, a referee in bankruptcy.*

No.	Creditors. [To be placed alphabetically, and the names of all the parties to the proof to be carefully set forth.]	Sum proved.		Dividend.	
		Dollars.	Cents.	Dollars.	Cents.
—					
...	.....	.....	.....	.....	.....
...	.....	.....	.....	.....	.....

—, *Referee in Bankruptcy.*

## [FORM No. 41.]

## NOTICE OF DIVIDEND.

In the District Court of the United States for the — District of —

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, on the — day of —, A. D. 18—.

To —,

Creditor of —, bankrupt:

I hereby inform you that you may, on application at my office, —, on the — day of —, or on any day thereafter, between the hours of

—, receive a warrant for the — dividend due to you out of the above estate. If you cannot personally attend, the warrant will be delivered to your order on your filling up and signing the subjoined letter.

—, *Trustee*.

#### CREDITOR'S LETTER TO TRUSTEE

To —, Trustee in bankruptcy of the estate of —, bankrupt:

Please deliver to — the warrant for dividend payable out of the said estate to me.

—, *Creditor*.

#### [FORM No. 42.]

##### PETITION AND ORDER FOR SALE BY AUCTION OF REAL ESTATE

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt*.

Respectfully represents —, trustee of the estate of said bankrupt, that it would be for the benefit of said estate that a certain portion of the real estate of said bankrupt, to wit: [*here describe it and its estimated value*] should be sold by auction, in lots or parcels, and upon terms and conditions, as follows: —. Wherefore he prays that he may be authorized to make sale by auction of said real estate as aforesaid.

Dated this — day of —, A. D. 18—, —, *Trustee*.

The foregoing petition having been duly filed, and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [*or after hearing — in favor of said petition and — in opposition thereto*], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's real estate specified in the foregoing petition, by auction, keeping an accurate account of each lot or parcel sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this — day of —, A. D. 189—,

—, *Referee in Bankruptcy*.

#### [FORM No. 43.]

##### PETITION AND ORDER FOR REDEMPTION OF PROPERTY FROM LIEN.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt*.

Respectfully represents —, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here de*

*scribe the estate or property and its estimated value*] is subject to a mortgage [*describe the mortgage*], or to a conditional contract [*describing it*], or to a lien [*describe the origin and nature of the lien*], [or, if the property be personal property, has been pledged or deposited and is subject to a lien] for [*describe the nature of the lien*], and that it would be for the benefit of the estate that said property should be redeemed and discharged from the lien thereon. Wherefore he prays that he may be empowered to pay out of the assets of said estate in his hands the sum of —, being the amount of said lien, in order to redeem said property therefrom.

Dated this — day of —, A. D. 18—, —, Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing — in favor of said petition and — in opposition thereto], it is ordered that the said trustee be authorized to pay out of the assets of the bankrupt's estate specified in the foregoing petition the sum of —, being the amount of the lien, in order to redeem the property therefrom.

Witness my hand this — day of —, A. D. 18—.

—,  
Referee in Bankruptcy.

[FORM No. 44.]

PETITION AND ORDER FOR SALE SUBJECT TO LIEN.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, Bankrupt. }

Respectfully represents —, trustee of the estate of said bankrupt, that a certain portion of said bankrupt's estate, to wit: [*here describe the estate or property and its estimated value*] is subject to a mortgage [*describe mortgage*], or to a conditional contract [*describe it*], or to a lien [*describe the origin and nature of the lien*], or [if the property be personal property] has been pledged or deposited and is subject to a lien for [*describe the nature of the lien*], and that it would be for the benefit of the said estate that said property should be sold, subject to said mortgage, lien, or other incumbrance. Wherefore he prays that he may be authorized to make sale of said property, subject to the incumbrance thereon.

Dated this — day of —, A. D. 18—. —, Trustee.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing — in favor

of said petition and — in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, by auction [or, at private sale], keeping an accurate account of the property sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this — day of —, A. D. 189—, —,

*Referee in Bankruptcy.*

[FORM No. 45.]

PETITION AND ORDER FOR PRIVATE SALE.

In the District Court of the United States for the — District of —,

In the matter of }  
—, *Bankrupt.* } In Bankruptcy.

Respectfully represents —, duly appointed trustee of the estate of the aforesaid bankrupt.

That for the following reasons, to wit, —, it is desirable and for the best interest of the estate to sell at private sale a certain portion of the said estate, to wit: —.

Wherefore he prays that he may be authorized to sell the said property at private sale.

Dated this — day of —, A. D. 189—, —, *Trustee.*

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to creditors of said bankrupt, now, after due hearing, no adverse interest being represented thereat [or after hearing — in favor of said petition and — in opposition thereto], it is ordered that the said trustee be authorized to sell the portion of the bankrupt's estate specified in the foregoing petition, at private sale, keeping an accurate account of each article sold and the price received therefor and to whom sold; which said account he shall file at once with the referee.

Witness my hand this — day of —, A. D. 189—, —,

*Referee in Bankruptcy.*

[FORM No. 46.]

PETITION AND ORDER FOR SALE OF PERISHABLE PROPERTY.

In the District Court of the United States for the — District of —,

In the matter of }  
—, *Bankrupt.* } In Bankruptcy.

Respectfully represents —, the said bankrupt [or, a creditor, or the receiver, or the trustee of the said bankrupt's estate].

That a part of the said estate, to wit, —, now in —, is perishable, and that there will be loss if the same is not sold immediately.

Wherefore he prays the court to order that the same be sold immediately as aforesaid.

Dated this — day of —, A. D. 18—.

The foregoing petition having been duly filed and having come on for a hearing before me, of which hearing ten days' notice was given by mail to the creditors of the said bankrupt [or, without notice to the creditors], now, after due hearing, no adverse interest being represented thereat [or after hearing — in favor of said petition and — in opposition thereto], I find that the facts are as above stated, and that the same is required in the interest of the estate, and it is therefore ordered that the same be sold forthwith and the proceeds thereof deposited in court.

Witness my hand this — day of —, A. D. 18—.

—, *Referee in Bankruptcy.*

[FORM No. 47.]

#### TRUSTEE'S REPORT OF EXEMPTED PROPERTY.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, on the — day of —, 18—.

The following is a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property, under the provisions of the acts of Congress relating to bankruptcy:

GENERAL HEAD.	Particular description.	Value.	
		Dolla.	Cts.
Military uniform, arms, and equipments.....			
Property exempted by State laws.....			

—, *Trustee.*

[FORM No. 48.]

#### TRUSTEE'S RETURN OF NO ASSETS.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
—, *Bankrupt.*

At —, in said district, on the — day of —, A. D. 18—.

On the day aforesaid, before me comes —, of —, in the county of — and State of —, and makes oath, and says that he, as trustee of



the estate and effects of the above-named bankrupt, neither received nor paid any moneys on account of the estate.

Subscribed and sworn to before me at —, this — day of —, A. D. 18—,

*Referee in Bankruptcy.*

[FORM No. 49.]

ACCOUNT OF TRUSTEE.

*The estate of — —, bankrupt, in account with — —, trustee.*  
*DR. CR.*

		Dolla.	Cts.	Dolla.	Cts.			Dolla.	Cts.	Dolla.	Cts.
.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

[FORM No. 50.]

OATH TO FINAL ACCOUNT OF TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of }  
 — —, Bankrupt. } In Bankruptcy.

On this — day of —, A. D. 18—, before me comes — —, of —, in the county of — and State of —, and makes oath, and says that he was, on the — day of —, A. D. 18—, appointed trustee of the estate and effects of the above-named bankrupt, and that as such trustee he has conducted the settlement of the said estate. That the account hereto annexed containing — sheets of paper, the first sheet whereof is marked with the letter — [reference may here also be made to any prior account filed by said trustee], is true, and such account contains entries of every sum of money received by said trustee on account of the estate and effects of the above-named bankrupt, and that the payments purporting in such account to have been made by said trustee have been so made by him. And he asks to be allowed for said payments and for commissions and expenses as charged in said accounts.

— —, Trustee.

Subscribed and sworn to before me at —, in said — district of —, this — day of —, A. D. 18—,

[Official character.]

## [FORM No. 51.]

## ORDER ALLOWING ACCOUNT AND DISCHARGING TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
 — —, Bankrupt. }

The foregoing account having been presented for allowance, and having been examined and found correct, it is ordered, that the same be allowed, and that the said trustee be discharged of his trust.

— —,  
*Referee in Bankruptcy.*

## [FORM No. 52.]

## PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
 — —, Bankrupt. }

To the Honorable — —, Judge of the District Court for the — District of —:

The petition of — —, one of the creditors of said bankrupt, respectfully represents that it is for the interest of the estate of said bankrupt that — —, heretofore appointed trustee of said bankrupt's estate, should be removed from his trust, for the causes following, to wit: [*Here set forth the particular cause or causes for which such removal is requested.*]

Wherefore — — pray that notice may be served upon said — —, trustee as aforesaid, to show cause, at such time as may be fixed by the court, why an order should not be made removing him from said trust.

## [FORM No. 53.]

## NOTICE OF PETITION FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
 — —, Bankrupt. }

At — —, on the — day of —, A. D. 18—,

To — —, Trustee of the estate of — —, bankrupt:

You are hereby notified to appear before this court, at — —, on the — day of —, A. D. 18—, at — o'clock —, m., to show cause (if any you have) why you should not be removed from your trust as trustee as aforesaid, according to the prayer of the petition of — —, one of the

creditors of said bankrupt, filed in this court on the — day of —, A. D. 18—, in which it is alleged [*here insert the allegation of the petition*].  
— — —, Clerk.

[FORM No. 54.]

ORDER FOR REMOVAL OF TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
— — —, Bankrupt,

Whereas — — —, of — — —, did, on the — day of —, A. D. 18—, present his petition to this court, praying that for the reasons therein set forth, — — —, the trustee of the estate of said — — —, bankrupt, might be removed:

Now, therefore, upon reading the said petition of the said — — — and the evidence submitted therewith, and upon hearing counsel on behalf of said petitioner and counsel for the trustee, and upon the evidence submitted on behalf of said trustee,

It is ordered that the said — — — be removed from the trust as trustee of the estate of said bankrupt, and that the costs of the said petitioner incidental to said petition be paid by said — — —, trustee [*or*, out of the estate of the said — — —, subject to prior charges].

Witness the Honorable — — —, judge of the said court, and the seal thereof, at — — —, in said district, on the — day of —, A. D. 18—.

[*Seal of*  
the court.] — — —, Clerk.

[FORM No. 55.]

ORDER FOR CHOICE OF NEW TRUSTEE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
— — —, Bankrupt,

At — — —, on the — day of —, A. D. 18—.

Whereas by reason of the removal [*or* the death *or* resignation] of — — —, heretofore appointed trustee of the estate of said bankrupt, a vacancy exists in the office of said trustee,

It is ordered, that a meeting of the creditors of said bankrupt be held at — — —, in — — —, in said district, on the — day of —, A. D. 18—, for the choice of a new trustee of said estate.

And it is further ordered that notice be given to said creditors of the time, place, and purpose of said meeting, by letter to each, to be deposited in the mail at least ten days before that day.

— — —,  
*Referee in Bankruptcy.*

## [FORM No. 56.]

## CERTIFICATE BY REFEREE TO JUDGE.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
 — — —, *Bankrupt.*

I, — — —, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the following question arose pertinent to the said proceedings: [*Here state the question, a summary of the evidence relating thereto, and the finding and order of the referee thereon.*]

And the said question is certified to the judge for his opinion thereon.

Dated at —, the — day of —, A. D. 18—.

— — —,  
*Referee in Bankruptcy.*

## [FORM No. 57.]

## BANKRUPT'S PETITION FOR DISCHARGE.

In the matter of } In Bankruptcy.  
 — — —, *Bankrupt.*

To the Honorable — — —, Judge of the District Court of the United States for the District of —:

— — —, of —, in the county of — and State of —, in said district, respectfully represents that on the — day of —, last past, he was duly adjudged bankrupt under the acts of Congress relating to bankruptcy; that he has duly surrendered all his property and rights of property, and has fully complied with all the requirements of said acts and of the orders of the court touching his bankruptcy.

Wherefore he prays that he may be decreed by the court to have a full discharge from all debts provable against his estate under said bankrupt acts, except such debts as are excepted by law from such discharge.

Dated this — day of —, A. D. 189—.

— — —, *Bankrupt.*

## ORDER OF NOTICE THEREON.

District of —, ss:

On this — day of —, A. D. 189—, on reading the foregoing petition, it is—

Ordered by the court, that a hearing be had upon the same on the — day of —, A. D. 189—, before said court at —, in the said district, at — o'clock in the —noon; and that notice thereof be published in — —, a newspaper printed in said district, and that all known creditors and other persons in interest may appear at the said time and place and show cause, if any they have, why the prayer of the said petitioner should not be granted.

And it is further ordered by the court, that the clerk shall send by mail to all known creditors copies of said petition and this order, addressed to them at their places of residence as stated.

Witness the Honorable —, judge of the said court, and the seal thereof, at —, in said district, on the — day of —, A. D. 189—.

[Seal of —, Clerk.  
the court.]

— hereby depose, on oath, that the foregoing order was published in the — on the following — days, viz:

On the — day of — and on the — day of —, in the year 189—.

District of —, —, 189—.

Personally appeared —, and made oath that the foregoing statement by him subscribed is true.

Before me, —, [Official character.]

I hereby certify that I have on this — day of —, A. D. 189—, sent by mail copies of the above order, as therein directed.

—, Clerk.

[FORM No. 58.]

SPECIFICATION OF GROUNDS OF OPPOSITION TO BANKRUPT'S DISCHARGE.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
—, Bankrupt.

—, of —, in the county of — and State of —, a party interested in the estate of said —, bankrupt, do hereby oppose the granting to him of a discharge from his debts, and for the grounds of such opposition do file the following specification: [Here specify the grounds of opposition.] —, Creditor.

[FORM No. 59.]

DISCHARGE OF BANKRUPT.

District Court of the United States, — District of —,

Whereas, — of — in said district, has been duly adjudged a bankrupt, under the acts of Congress relating to bankruptcy, and appears to have conformed to all the requirements of law in that behalf, it is therefore ordered by this court that said — be discharged from all debts and claims which are made provable by said acts against his estate, and which existed on the — day of —, A. D. 189—, on which day the petition for adjudication was filed — him; excepting

such debts as are by law excepted from the operation of a discharge in bankruptcy.

Witness the Honorable — —, judge of said district court, and the seal thereof, this — day of —, A. D. 189—.

[Seal of  
the court.]

— —, Clerk.

[FORM No. 60.]

PETITION FOR MEETING TO CONSIDER COMPOSITION.

District Court of the United States for the — District of —,

— —, } In Bankruptcy.  
*Bankrupt.*

To the Honorable — —, Judge of the District Court of the United States for the — District of —:

The above-named bankrupt respectfully represents that a composition of — per cent. upon all unsecured debts, not entitled to a priority — in satisfaction of — debts has been proposed by — to — creditors, as provided by the acts of Congress relating to bankruptcy, and — verily believe that the said composition will be accepted by a majority in number and in value of — creditors whose claims are allowed.

Wherefore, he prays that a meeting of — creditors may be duly called to act upon said proposal for a composition, according to the provisions of said acts and the rules of court. — —, *Bankrupt.*

[FORM No. 61.]

APPLICATION FOR CONFIRMATION OF COMPOSITION.

In the District Court of the United States for the — District of —.

In the matter of } In Bankruptcy.  
— —, *Bankrupt.*

To the Honorable — —, Judge of the District Court of the United States for the — District of —:

At —, in said district, on the — day of —, A. D. 189—, now comes — —, the above-named bankrupt, and respectfully represents to the court that, after he had been examined in open court [or at a meeting of his creditors] and had filed in court a schedule of his property and a list of his creditors, as required by law, he offered terms of composition to his creditors, which terms have been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number represents a majority in amount of such claims; that the consideration to be paid by the bankrupt to his creditors, the money necessary to pay all debts which have priority, and the costs of the proceedings, amounting in all to the sum of — dollars, has been deposited, subject to the order of the judge, in the — National Bank of —, a designated depository of money in bankruptcy cases.

Wherefore the said — — respectfully asks that the said composition may be confirmed by the court. — —, *Bankrupt.*

[FORM No. 62.]

ORDER CONFIRMING COMPOSITION.

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
— — —

An application for the confirmation of the composition offered by the bankrupt having been filed in court, and it appearing that the composition has been accepted by a majority in number of creditors whose claims have been allowed and of such allowed claims; and the consideration and the money required by law to be deposited, having been deposited as ordered, in such place as was designated by the judge of said court, and subject to his order; and it also appearing that it is for the best interests of the creditors; and that the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge, and that the offer and its acceptance are in good faith and have not been made or procured by any means, promises, or acts contrary to the acts of Congress relating to bankruptcy: It is therefore hereby ordered that the said composition be, and it hereby is, confirmed.

Witness the Honorable — — —, judge of said court, and the seal thereof, this — day of —, A. D. 189.

[Seal of  
the court.]

— — —, Clerk.

[FORM No. 63.]

ORDER OF DISTRIBUTION ON COMPOSITION.

UNITED STATES OF AMERICA:

In the District Court of the United States for the — District of —,

In the matter of } In Bankruptcy.  
— — —, Bankrupt. }

The composition offered by the above-named bankrupt in this case having been duly confirmed by the judge of said court, it is hereby ordered and decreed that the distribution of the deposit shall be made by the clerk of the court as follows, to wit: 1st, to pay the several claims which have priority; 2d, to pay the costs of proceedings; 3d, to pay, according to the terms of the composition, the several claims of general creditors which have been allowed, and appear upon a list of allowed claims, on the files in this case, which list is made a part of this order.

Witness the Honorable — — —, judge of said court, and the seal thereof, this — day of —, A. D. 18—.

[Seal of  
the court.]

— — —, Clerk.





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